In The Matter Of:

PHYLLIS SMALL v.
LORILLARD TOBACCO COMPANY

Horace Kornegay
November 19, 1997

WAGA & SPINELLI
4 Becker Farm Road
Roseland, NJ 07068
(973) 992-4111 FAX: (973) 992-0990

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PHYLLIS SMALL and DENISE FUBINI, individually, and on behalf of others similarly situated,

Plaintiffs,

-against-

LORILLARD TOBACCO COMPANY, INC., LORILLARD, INC., LOEWS CORPORATION, COUNCIL FOR TOBACCO RESEARCH-USA, INC. (Successor to Tobacco Industry Research Committee), and TOBACCO INSTITUTE, INC.,

Defendants.

Index No. 110949/96
Judge Charles E. Ramos

(Caption continues . . .)

DEPOSITION OF HORACE KORNEGAY
(Volume II)

TRANSCRIPT of testimony as taken by and before Elizabeth S. Girvan, Shorthand Reporter and Notary Public in and for the State of North Carolina, at the offices of Adams, Kleemeier, Hagan, Hannah & Fouts, 701 Green Valley Road, Greensboro, North Carolina, on Wednesday, November 19, 1997, commencing at 9:33 in the forenoon.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MARY ANN HOSKINS, Executrix of the Estate of Edwin Paul Hoskins, WALTINA BROWN and DANTE AUBAIN, individually, and on behalf of others similarly situated,

Plaintiffs,

-against-

R.J. REYNOLDS TOBACCO COMPANY, RJR NABISCO, INC., COUNCIL FOR TOBACCO RESEARCH-USA, INC. (Successor to Tobacco Industry Research Committee), and TOBACCO INSTITUTE, INC.,

Defendants.

Index No. 110951/96
Judge Charles E. Ramos

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SHARLENE HOBERMAN and AUDREY HULSE, on behalf of the Estate Lewis Hulse, individually, and on behalf of others similarly situated,

Plaintiffs,

-against-

BROWN & WILLIAMSON TOBACCO CORPORATION, B.A.T. INDUSTRIES P.L.C., BATUS, INC., BATUS HOLDINGS, INC., COUNCIL FOR TOBACCO RESEARCH-USA, INC. (Successor to Tobacco Industry Research Committee), and TOBACCO INSTITUTE, INC.,

Defendants.

Index No. 110953/96
Judge Charles E. Ramos

(Caption continues . . .)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROSE FROSINA, ELIZABETH COLAVITO X
and ANILDA ROSS, individually, X
and on behalf of others X
similarly situated, X
X
Plaintiffs, X
X
-against- X
X
PHILIP MORRIS, INC., PHILIP X Index No.
MORRIS COMPANIES, INC., COUNCIL X 110950/96
FOR TOBACCO RESEARCH-USA, INC. X
(Successor to Tobacco Industry X Judge Charles
Research Committee), and X E. Ramos
TOBACCO INSTITUTE, INC., X
X
Defendants. X
_____X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
CATHERINE ZITO, PETER HOBERMAN X
and GEORGE ELISSEOU, X
individually, and on behalf of X
others similarly situated, X
X
Plaintiffs, X
X
-against- X
X
THE AMERICAN TOBACCO COMPANY, X Index No.
INC., AMERICAN BRANDS, INC., X 110952/96
COUNCIL FOR TOBACCO RESEARCH-USA,X
INC. (Successor to Tobacco X Judge Charles
Industry Research Committee), X E. Ramos
and TOBACCO INSTITUTE, INC., X
X
Defendants. X
_____X

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APPEARANCES:

WAITE SCHNEIDER BAYLESS
& CHESLEY CO., L.P.A.
Energy Centre - 30th Floor
1100 Poydras Street
New Orleans, Louisiana 70163-3000
BY: SHERRILL HONDORF, ESQ.
For the Plaintiffs
(504) 585-7920

GOODKIND LABATON RUDOFF
& SUCHAROW, L.L.P.
100 Park Avenue, 12th Floor
New York City, New York 10017
BY: HOLLIS SALZMAN, ESQ.
For the Plaintiffs
(212) 907-0783

MELLON WEBSTER & MELLON
87 N. Broad Street
Doylestown, Pennsylvania 18901
BY: CRAIG T. EDWARDS, ESQ.
For the Plaintiffs
(215) 348-7700

COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Post Office Box 7566
Washington, D.C. 20044-7566
BY: JOHN VANDERSTAR, ESQ.
For the Defendant Tobacco Institute
(202) 662-5540

ADAMS KLEEMEIER HAGAN HANNAH & FOUTS
701 Green Valley Road
Greensboro, North Carolina 27408
BY: DANIEL W. FOUTS, ESQ.
PETER G. PAPPAS, ESQ.
For Mr. Kornegay
(910) 373-1600

ALSO PRESENT:
JOHN TROUBLEFIELD, VIDEOGRAPHER

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VIDEOGRAPHER: Today is November the 19th, 1997, and this is Day 2 of the deposition of Horace Kornegay. The time is 9:33 a.m.

HORACE KORNEGAY,

having been previously duly sworn, was examined and testified as follows:

MS. HONDORF: Good morning, Mr. Kornegay.

THE WITNESS: Good morning.

MS. HONDORF: You – you realize you're still under oath from yesterday?

THE WITNESS: I do.

EXAMINATION
BY MS. HONDORF:

Q: Did you review any documents after we left yesterday?

A: None – none pertaining to this matter.

Q: That's what we –

A: I went to a board meeting of the neighborhood association and reviewed the budget for next year, Ascot Pointe.

Q: How was it?

A: Boring and dry.

Q: Well, these documents are not so boring and dry. Let's pick up where we left off.

I'm going to show you another that we're going to mark –

MS. HONDORF: Where, are we, Ms. Court Reporter? Fourteen?

THE REPORTER: Fifteen.

BY MS. HONDORF:

Q: – Kornegay Number 15, entitled, "The Cigarette Controversy: Why More Research Is Needed. A review by The Tobacco Institute of recent medical and scientific evidence presented to United States Congressional Committees." The date is 1984. It's on the very last page.

(EXHIBIT NUMBER 15 WAS MARKED FOR IDENTIFICATION)

(WITNESS REVIEWS DOCUMENT)

A: Let me ask you. Do you want me to read this whole thing and go through it?

Q: No, I don't want you to read the whole thing. I want to – I want to know whether you recollect seeing it before.

A: I certainly recollect the information, or some of the information, that's contained in it. To sit here and 15 years later tell you that I remember distinctly seeing this particular document or reading this particular document,

I'm at a loss to do that, because I've seen so many documents through so long, and it's been so long since I've seen any or read any, that I don't have an independent recollection of having – having read or seen this particular one.

Q: But you're familiar –

A: Although the – the material, the information that it contains, I've – I'm aware of and have – have read.

Q: Do you have any recollection of the source of the material contained in that document?

A: No, I don't have any recollection, as – as I sit here, the source.

Q: Uh-huh.

A: The – well, the assumption is that it – it comes from numerous sources, principally from experts who have testified at congressional hearings, or who have otherwise gone on the record in – in scientific journals.

Q: Uh-huh. Do you have any idea what the distribution of that document was, whether it was beyond the congressional – what's the word I'm looking for – beyond what's

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indicated –
A: Congressional distribution?
Q: Right.
A: No, I don't. I couldn't tell you –
MR. VANDERSTAR: I'm sorry. Beyond the what?
MS. HONDORF: He said "distribution." I meant congressional distribution, as indicated on the document.
THE WITNESS: I have no knowledge of –
MS. HONDORF: Okay.
THE WITNESS: – whether it went beyond the Congress or not.
BY MS. HONDORF:
Q: And what testimony is that recounting? Testimony from 1982? '83? '84? Do you know?
A: Well, no, it would be – it would take a long time for me to be able to answer that precisely. The information here is – that I see, the part I've read – now, I want to emphasize I haven't read the whole thing.
But the – the information that I have read, the part of it that I have read,

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parts, indicate that it's – it's a collection of information or writings through the years.
They start talking about the smoking – smoking and health and that statistics in and of themselves – that there is a statistical correlation between smoking and certain diseases. But that doesn't prove causation.
Now, that's a fundamental sign – not just with tobacco but fundamental in the – in the world of science. It's been talked about and enunciated for many, many years. And they pick it up here because it applies to the – the smoking controversy. While there's a statistical association, there's – there's no causation. That doesn't prove causation.
Q: What's your understanding of causation? What would be necessary to prove causation?
A: Well – and I don't know that this is a full answer to your question, but let's – let's use an analogy or an example. If I had – if I had this cup full of arsenic and I brought it in here and I gave each one of us a pinch of it and

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we all took it and we all died, then that's pretty good evidence that the – the arsenic caused it.
But if we – the same group sits here and smokes cigarettes, and one out of ten, or how many we have here, comes down with lung cancer or heart disease, the others who smoked the same amount, and maybe more, it doesn't affect them, then that's – that's not causation.
Q: Okay.
A: There's a statistic there, that one out of ten who smoke came down with the disease. But what else did those people do that we don't know about or that, if we do know about, we don't know what effect it could have had or towards causing that disease? What about their mothers and their fathers? Did they come down with the same disease?
This is – this is the point that I'm trying to make, that until you have a much clearer picture, until somebody comes up with an experimental animal that can prove something – for example, they – there are mice and maybe other animals who have smoked all

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their life, all their lives, and never come down with any of these diseases that have been attributed to cigarette smoking.
They've never been able to produce human-type lung cancer – lung cancer in animals, experimental animals, through the inhalation of tobacco smoke.
So that argues against the theory of causation, certainly to the – to the point that a very thoughtful person, in my view, couldn't sit down here and say, Oh, it causes it.
You could say, It could cause it; it may be one of the causes. But it – it's not – it hasn't been shown or proven that it is the cause of it.
Q: Would you consider that it's the individual makeup of the smoker that causes the disease?
A: I'm not a scientist. I don't know. I – I'd hesitate to even – if your question is, do I think that the – the smoker, the individual, is going to get – gets the cancer because of his makeup, I don't know. That's a possibility. That's one of the theories that is genetic.

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There's an inclination for certain - throughout the scientific endeavors, to show that the children, offsprings of certain people, get the same diseases.

Q: Can you recall any research that confirms the theory that the diseases are caused by genetic makeup?

A: No, not - not that confirms it. There certainly have been studies that indicate or suggest that heredity plays a very big role in what diseases people come down with.

The examples, of course, are particular with - with breast cancer, I think, and things of that sort. And I'm - I'm no expert. I'm not - I'm just suggesting that I've read them and I've heard about them.

Q: Would you agree with me that there are studies that indicate or suggest that people get lung cancer, emphysema, and other lung diseases from smoking cigarettes?

A: No. I think the answer to that is, no, if I understand the question. Now, it's - it's obviously true that - some people who smoke do get those diseases. But to go the step further and suggest that they would not have gotten them

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if they hadn't have smoked, I'm not going to do that. I don't think anybody can really.

Q: Because it's difficult to prove a negative; is that correct?

A: That's right. You can't prove a negative.

Q: Okay. Let's move on. I think we're finished with this document.

A: All right.

MS. HONDORF: I'm going to mark a series of press releases, all of them from May and March of 1982. I'm going to mark these Exhibit 16, let your counsel take a look at them, and then I need to have a set for the witness, a set for any counsel.

MR. VANDERSTAR: Do you have another set?

MS. HONDORF: This set's marked.

MR. VANDERSTAR: Oh, that's marked.

MS. HONDORF: Yeah. That's why we're letting you look at them first.

MS. SALZMAN: Here's a clip just to hold them together.

MR. VANDERSTAR: Are they all the same pages?

MS. HONDORF: They're all in May and

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March of 1982. Many of them are March 12th.

MR. VANDERSTAR: All right. Let me just make some notes of the - is it marked as one - excuse me -

MS. HONDORF: One exhibit.

MR. VANDERSTAR: Are the TIMN numbers consecutive, from the first page of the first one to the last page of the last one, do you know?

MS. HONDORF: I'll look, but I don't remember putting them in that order.

(COMMENTS OFF RECORD)

MS. HONDORF: With the exception, I think, of the last two, they are.

(COMMENTS OFF RECORD)

(EXHIBIT NUMBER 16 WAS MARKED FOR IDENTIFICATION)

BY MS. HONDORF:

Q: Okay. Now, if you'll just page through these and familiarize yourself with what they are.

(DOCUMENT HANDED TO WITNESS FOR REVIEW)

We believe they're press releases from The Tobacco Institute.

(WITNESS REVIEWS DOCUMENT)

I see you've finished the first one.

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Does it look like a familiar-type document?

A: It does.

Q: And what is it?

A: It was a press release based on a statement that Dr. Victor Buhler made before the Congress, before the Henry Waxman Subcommittee, stating that - that those who - that - let me start all over.

Q: Um -

MR. VANDERSTAR: Let him -

THE WITNESS: Stating that animal experiments - sort of the same statement I made earlier: No inhalation studies have shown that tobacco smoke inhalation causes lung cancer.

BY MS. HONDORF:

Q: That's what the press release said?

A: And this - this is what it says that Dr. Buhler said. I was not there. I don't remember whether he said it or he didn't.

Q: Do you know Dr. Buhler?

A: No, I don't know Dr. Buhler.

Q: Do you know whether Dr. Buhler -

A: The name has a ring. I mean, it may have been one I heard of, but I don't personally know him.

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Q: Do you know whether -
A: I've never met him.
Q: Do you know whether Dr. Buhler was ever employed to do research for the CTR?
A: I do not know.
Q: Do you know whether he ever did research for the tobacco industry independent of the CTR?
A: No, I don't. I don't know that.
Q: Okay. Let's move to the second one. Do you recall the name Dr. S.C. Littlechild, which is in the second paragraph?
A: No, I don't recall him. Littlechild, Littlechild. He must be English. Yeah. He was from the University of Birmingham in England.
Q: Do you have any recollection whether The Tobacco Institute helped prepare the testimony of Dr. Buhler or Dr. Littlechild?
A: No, absolutely no - no recollection of ever doing anything like that.
Q: Mr. Panzer told us about two weeks ago that The Tobacco Institute was in the habit of preparing testimony for people. Does that refresh your recollection at all?
MR. VANDERSTAR: I object to that as

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mischaracterizing Mr. - Mr. Panzer's testimony.
MS. HONDORF: It's not a mischaracterization. Did you read Mr. Panzer's deposition?
MR. VANDERSTAR: I'm not here to answer questions.
MS. HONDORF: Well, I know you're not, but I don't think you should object if you haven't read the deposition, because you don't know what he testified if. You didn't read it.
You can answer.
THE WITNESS: Read me the question back. And whether - you want me to answer Fred Panzer's question or your question?
BY MS. HONDORF:
Q: I just asked you if Mr. Panzer's testimony refreshed your recollection about The Tobacco Institute preparing testimony for congressional hearings.
A: To this extent: There have been instances where The Tobacco Institute assisted people in the preparation of their testimony: They typed it; they helped them in - in some way. But never, to my knowledge, made it up and told them to say it. I mean, it was - it was

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their - they were their words and their thoughts, and The Institute may have used its facilities to type and to reproduce and things of that thought.
Q: Did The Institute use its facilities to provide information to any witnesses for hearings?
A: Not to my knowledge. Information that pertained to their field of - the witnesses' field of expertise. Provided them with certain information, which is understandable, like, when is the hearing, where is the hearing, what's the circumstances, and this, that, and the other.
Q: Did The Tobacco Institute maintain a library of scientific information?
A: Yes. You could call it a library. It was a collection of printed materials that were available to the public.
Q: Did The Tobacco Institute provide information from that library to people for congressional hearings?
A: I'm sure on those occasions when I testified or others at The Institute testified - and there have been one or two others back in my day who did testify in

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addition to me - that material was used in preparation of the statements that we made, that were made by the employees of The Institute.
Q: Did The Tobacco Institute engage in a process of searching out people to testify for hearings?
A: The Tobacco Institute didn't, no.
Q: Who - who did? Do you know?
A: I don't know. I have - you know, I'm - I just answer for The Institute.
Q: And The Institute would not be instrumental in providing scientists for testimony for congressional hearings?
A: No, no, no. Never taking the initiative. Now, if somebody called in The Institute and said, Look, I'm Dr. So and so, and what those people over there are saying is a - you know, before the Waxman Subcommittee is just not true, it's not accurate, and I know it, because I've done this, that, and the other, The Institute would I'm sure interview them, talk to them.
And if they felt that - whoever at The Institute did that, felt that they had something worthy of being said, they would refer them to some expert that they would be

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available, certainly one of the doctors at The Institute.
That's the only time that I – I can recall or understand. I'm not – I don't recall that as a specific case, but that could have happened. When you – to fully answer your question. But did we have people out roaming the countryside looking for witnesses? The Institute did not.
Q: Was it The Institute's function to communicate the industry views to the Congress, including the Senate and the House?
A: Yes. Oh, yes.
Q: Was there any other arm of the industry that you're aware of who had that responsibility?
A: Other arm of the industry that had the responsibility to communicate to Congress, the House, and the Senate.
None – none, specifically. Now, that's not to say that in no occasion – under no occasion or circumstance would somebody not communicate something who was not an employee of The Institute.
Q: Well, what I'm driving at – excuse

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me.
A: Okay. Okay.
Q: What I'm driving at is I'm trying to determine how it is that the scientific testimony or the persons were offered to the Congress – I don't really know the process – in order to testify about the industry's positions, if it wasn't The Tobacco Institute that did it.
MR. VANDERSTAR: Well, then what's your question?
MS. HONDORF: I just asked him a question.
Would you read it back.
MR. VANDERSTAR: I don't think that was a question. I think that – you were saying –
MS. HONDORF: Do you understand what I said, Mr. Kornegay?
THE WITNESS: I'm not – I understand what you said, but I don't – I can't answer it accurately, because I don't know which part of it –
MS. HONDORF: Okay. I'll rephrase the question.

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BY MS. HONDORF:
Q: How is it that the scientists were presented or offered to the Congress for their testimony on behalf of the industry?
A: The views were known through publications, scientific journals, newspapers, and obviously somebody had to contact them or they volunteered.
Q: If I was a scientist –
A: But they – they –
Q: – and I had a particular view, could I just volunteer to testify to Congress?
A: You could volunteer. There's no assurance you'd get to testify. But – sure, you can vol – you can walk right into Congress. It happens many times.
Q: I'm asking you what the process was that these scientists sat in front of Congress and gave the views of the industry.
MR. VANDERSTAR: Well, now –
THE WITNESS: Well, now, you –
MR. VANDERSTAR: – let me object to the form of the question, because you're talking about the views of the industry and on behalf of the industry, which I didn't think is what you

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were asking before. I thought you were talking about scientists who would go in and express their own views to Congress. So, if you mean to be changing the question, I object to it.
MS. HONDORF: I don't think I changed the question. You can object. If the witness understands it, he can answer.
MR. VANDERSTAR: All right. Okay.
MS. HONDORF: Do you understand?
THE WITNESS: I understand – I think I understand the question. But the witnesses are testifying to their own views. Now, in some instances, those views could coincide with the views of The Institute. I'm not saying that isn't the case.
But to say that these scientific witnesses go over there and testify to the views of The Tobacco Institute is not an accurate statement. They're testifying based upon their own knowledge, their research, their experience, their education.
BY MS. HONDORF:
Q: How is it that they wound up sitting in a chair in front of a panel of congressmen, espousing views that would coincide with The

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Tobacco Institute's views? Did they get there all by themselves, or did The Tobacco Institute help them get there?
A: The Tobacco – The Tobacco Institute had – I've told you this – did not recruit scientific witnesses to testify in front of Congress.
Q: Did the tobacco industry provide scientific persons for The Tobacco Institute to present to Congress?
A: I don't know that I can answer that.
Q: Why can't you answer that?
A: I just don't know – say the – give me the question again. It's –
Q: Did the members of The Tobacco Institute, which are the tobacco industry, provide the scientists to The Tobacco Institute to present for hearings before the Congress?
A: They – they could have suggested certain – certain witnesses based upon their knowledge of – of the witnesses' experience and background.
Q: Suggested –
A: And once –
Q: – to The Tobacco Institute?
A: Yeah, to the – to The Institute or

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to – you know, to the medical people, that this particular witness has done this research and you check it out, and – if that's what you're asking.
Q: And then, once these scientists were suggested, how did they wind up sitting in a chair in front of Congress? That's what I'm trying to find out. What is the process?
A: The process would be for somebody to go and talk to this particular witness that somebody had indicated knew something about the – the subject matter. And he would be then informed about the hearing.
And I'm sure – and I've never done it, so all I can do is speculate on what's said and what's done. But it's just common sense to suggest or to state that – that he was advised that there was a hearing and this is the subject matter of the hearing. Can you – do you have any views on it? If you do, would you be willing to come to Washington and testify?
Q: And who is that somebody who did that?
A: I don't – it could any number of people. I – I did not do it. I've never contacted

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directly a member of the scientific community and talked to them and solicited them to come to Washington to testify.
Q: Was it anyone's responsibility in The Tobacco Institute to do that?
A: Obviously it was somebody's responsibility, because the witnesses came, and they volunteered to come and make statements that you have there in those public releases.
Q: Who –
A: News releases.
Q: What person is that? Do you know?
A: I don't know.
Q: But it was a person within The Tobacco Institute?
A: Not – no, not in The Institute.
Q: Did you have any dealings with the Council for Tobacco Research when you were with The Tobacco Institute?
A: Only to this extent. I had been – I went to meetings there occasionally, annual meetings. I knew the director. And when they would have one of their – I guess it was usually an annual meeting – and go over the – the research that they were funding and – and trying to – you

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know, to develop, they'd invite the people who were – the company people, and – and occasionally, they'd invite me up there as head of The Institute, just to hear what was going on and who was doing research and what the – the accomplishments had been, if there had been any, and that kind of thing. That's the dealing.
I had no dealings whatsoever, no role in what they did or how they did it, nor did anyone else at The Tobacco Institute. We were two totally separate and complete organizations.
Q: Uh-huh.
A: And we were instructed by our principals not to get involved with what they were doing.
Q: By "principals," you mean who?
A: The tobacco companies that funded both organizations.
Q: Do you recall the name Leonard Zahn?
A: Yeah, I remember Leonard Zahn.
Q: What was his function that you recall?
A: Leonard Zahn was a scientific writer. He – he wrote articles on science. He was a scientific reporter and supplied the – the

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scientific journals, as I recall, with reports on certain scientific break - certain scientific studies.
Q: Do you recall him having any functions at The Tobacco Institute?
A: Any functions?
Q: That's a bad word. I'm sorry.
Do you recall him having any connection at all with The Tobacco Institute?
A: Oh, Leonard. Whether Leonard had any connections.
Q: Right.
A: No, he had no connection. He would occasionally be invited to the meetings. We invited everybody and his little brother to come in for an annual meeting or something.
Q: Do you have any knowledge of anything called Special Account 4 or Special Account 5 or -
A: No.
Q: - Special Projects?
A: No. Now, Special Projects, I - I have some knowledge of those, but it's not the one that you're referring to.
Q: What are you referring to?

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A: I'm just referring to the one that I have some knowledge about.
Q: Well, why don't you tell us about that.
A: Well, there were about three projects that were - for reasons could not be funded by CTR, that the industry, independent of CTR, funded.
One of them was at Harvard. That was a smoke inhalation study that went on for several years.
Another one was out at Washington University, the medical school there. Now, that one did not involve smoking and health, but it involved - what was it? It was not smoking and health. And I'll tell you in a minute if I can think of it. Hered - not heredity. But - I can't think of it.
And the third one was out at UCLA.
Q: And that was -
A: That one - that one - and I don't know anything about that one. I don't recall even attending but one meeting that pertained to that particular project. I can't tell you who was running the project. But it was getting down towards the end of my career, I think.

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Q: Do you recall who -
A: Now, at Washington University, Dr. Paul Lacey, was the research director on this particular project. And it was some common - some common disease or ailment that was being researched, and they were having trouble - they couldn't get money out of the government. They couldn't get money out of these other organizations who went around raising money for research.
And it was viewed by Dr. Lacey and others there to be of sufficient importance to try to get the money, and obviously some of - somebody approached the tobacco industry, and they got together and agreed to fund it.
Q: You started -
A: And they were - they were called Special Projects. Now, the reason CT - let me - you want to ask me this, too. Why didn't CTR fund them?
Q: That's exactly right.
A: CTR had a policy in those days - and I guess it's still a policy - they would not fund a project that could not be completed in one year. It was year - yearly projects.

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And these - all of these projects were - went beyond a year. They were understood that it would take at least three years, I believe, to - to go through the projects - the project.
Q: Uh-huh.
A: And, therefore, CTR just couldn't do it and didn't do it. And that's the reason they ended up being funded directly by the tobacco companies.
Q: Is it your understanding that the function of the CTR was to research the links between smoking and health effects?
A: Well, that - that - yeah, that's my information. That's the reason they couldn't fund this - particularly this one out at Washington U, because it didn't pertain to smoking and health.
Q: Do you understand the reason for not funding any projects that could be finished in one year?
A: That couldn't be finished.
Q: That could not. I need to rephrase that.
A: Could not be finished.

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Q: Do you understand the reason why they would not fund projects which could not be finished in one year?
A: I don't know that I can give you the specific reason. That was the rule. And it was – it was so that they didn't get bogged down on one or two, because these science – some of these scientific projects and some of these scientists, you know, they – they're looking for a home. I don't mean to be unkind about it, but once – once they get a hold of something, they like to keep it. And that's human nature, I guess.
And CTR figured that if we – if we let them go on and on and on, they're always on the verge of a – of a breakthrough. All you got to do is study the American Cancer Society, and they've always got thing whipped in the next six months. That's been going on for 25 years.
And the same thing could be true to the people that come in, say, to CTR. And that's, I think, one of the reasons they didn't do it.
Q: Do you recollect who was in charge of the smoke inhalation studies at Harvard?

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A: There were a couple of people up there. I can recall the name of one of them.
Q: Who?
A: Dr. Huber – Huber or Hubner – Huber, I believe.
Q: I think we need to straighten that out. Did you actually have a Dr. Hubner on your staff at The Tobacco Institute at one time?
A: Early on we did. Hubner, I believe his name was, H-U-B-N-E-R.
Q: And the researcher at Harvard would be Huber?
A: H-U-B-E-R, not "N."
Q: Is that Dr. Gary Huber?
A: Gary Huber. Yeah, that was his name.
Q: That's the Harvard –
A: The one at Harvard – the Harvard. There was another one up there that got sick or something happened to him shortly after the – the grant was made to Harvard, and he – he had to leave or retire or do something. And then is when Dr. Huber took it over.
Q: Do you recollect the name Theodor Sterling?
A: Oh, yeah, I've heard the name. I've heard

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the name.
Q: In relation to what?
A: He – he's a researcher, scientific researcher.
Q: Did he receive funds from the CTR or the tobacco industry?
A: He – he received no funds from The Tobacco Institute. He could have received funds. I – I have no personal knowledge. But he could have received funds from the CTR. I just don't know.
Q: Do you recognize the name Dr. Aviado?
A: He's a Philippino. Yes, I recognize that name.
Q: And?
A: He was the head of the Philippino medical society, I believe.
Q: Do you recall him – excuse me. Go ahead.
A: Yeah, I recall the name.
Q: Do you recall him performing any research for the tobacco industry?
A: I recall him making a report at some kind of meeting on some kind of work he was doing,

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and – I'm – I don't know.
The assumption would be, I guess, that he was – he was funded – the project was funded by the – by the tobacco industry, not by The Institute, because we didn't have money to fund scientific projects.
Q: Do you recall the name Dr. Kotin, K-O-T-I-N, or Kotin?
A: Kotin, Kotin, Kotin.
Q: It doesn't –
A: K – K-O-T-I-N, Kotin.
Q: Let's move on to this third press release.
A: No.
Q: Do you recall the name Dr. Theodore Blau, B-L-A-U? We're on the third press release now.
A: The third one?
Q: Right here.
A: Let me see it written down. This is about baboons, rhesus monkeys, Blau.
I don't remember Dr. Blau. He's a – he's a psychological association.
Q: Okay. Let's move to the next one. How about Dr. Arthur Furst, F-U-R-S-T?

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A: Yeah, I remember Dr. Furst. He was quite an outstanding scientist. And I forgot – I've forgotten exactly what his field of endeavor was, but he was a well-recognized national expert in whatever his field was.
Q: I'm sorry. I missed that.
A: I said, I don't recall precisely what Dr. Furst's field of special – or his specialty was, but he was a recognized outstanding – outstanding individual in whatever his field was.
Q: Do you have any recollection that he ever received any funding from the tobacco industry?
A: I have no recollection of that.
Q: Okay. Let's move to the next one. I'm sure you'll recall who Dr. Sheldon Sommers is.
A: Oh, yes, yes. Dr. Sommons – Sommers was a pathologist, as I recall, up in New York at one of the big hospitals up there for many years, and he was also the – he also had a position at CTR, scientific director, I believe, at one point.
Now, you understand how CTR worked,

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how they – they didn't do any research. You know that.
Q: Well –
A: They just – grants.
Q: – why don't you tell me what your understanding –
A: They just made grants. They had a scientific advisory board. They would receive these applications for money, grants from the scientists who wanted to do certain research.
This independent board – scientific board examined and looked into the applications. And if they thought they were worthwhile, they would grant the request for the money, whatever it was.
And the director, of course – and they had several – and as I – they had – of course, they had a scientific director, and that's what Dr. Sommers did. And he, of course, had a pretty – he was well aware of most of the science.
So that's the way it worked. A lot of people think that CTR did the research. Well, they didn't do any research. Just like the first Surgeon General's report. People

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think they did – they didn't do any research. They just collected a bunch of old studies and sat around the table, talked about them, and put them together. That's all the first Surgeon General's report was composed of.
Q: Do you recall The Tobacco Institute having any responsibility to administer funding for this Harvard or this Washington or this UCLA study that you just mentioned?
A: The only responsibility that I recall in one or two or some of these, The Institute served as a – as a collector of the money from the several companies. Bear in mind, there were – there were five of the tobacco companies that were – the large companies – participating.
And I remember that one of the tobacco grower groups was so impressed with this study, that they offered to put in $25,000 a year, which was welcomed, of course.
And so they'd send the money to – the only thing The Institute did was collect the money. They got the checks in one place and sent them on to where ever – whoever they were collecting – to Harvard or to Kansas

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City – or St. Louis, not Kansas City. St. Louis.
Q: Why is it that the industry used The Institute to do that?
A: Because it was – it was – it was the most convenient way to do it. Whatever they done, they could have gone to Western Union, you know, or any other thing. But they didn't – they felt that it ought to go to some central group, or some central knowledgeable organization.
You could have done it through a bank, I'm sure, for a fee. But when they had this already set up, they said, We'll send it to Washington, and then let them forward the money, the checks, on to UCLA, Harvard, or –
Q: Did you ever make any trips –
A: – St. Louis.
Q: – to any of those research facilities?
A: I sure did.
Q: And in what –
A: I went to St. – to St. Louis several times.
Q: Why?
A: Because each year they would have a

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meeting to report on what they had done, what success, if any, they had in their experimentation. And they just wanted to keep the – their benefactors, if you could call them that, the people providing the money, they wanted to keep them informed of how it was going.

That's common practice now. Tobacco doesn't have anything to do with that. Any of these organizations that grant money expect to be informed by the person who's getting the money about what they're doing.

Q: I think your testimony just was that the only function that The Tobacco Institute had in this money was just to give it. And so why would The Tobacco Institute care what the results of the research were?

A: I didn't say they did. I don't know where you get that.

Q: Well, you just said –

A: Whether care – I'm saying they wanted to be advised of what they were doing. They're paying them big money.

Q: When you say "they," you mean the tobacco industry?

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A: The tobacco industry.

Q: So you went –

A: Or any other group who's funding research, they want to know – they want to have – be aware of what the people who are getting the money are doing with that money. It's just good business. It makes sense.

Q: The tobacco industry had a research arm, if I'm not mistaken, called the CTR at this same time; is that correct?

A: That's exactly right.

Q: Why would not the – the grantees of this money report to the scientists rather than the lobbyists and press people?

MR. VANDERSTAR: Oh, object to that.

THE WITNESS: That's –

MR. VANDERSTAR: There's no – nothing about lobbyists and press people in his testimony.

THE WITNESS: They don't report to the lobbyists and the press people.

BY MS. HONDORF:

Q: Is The Tobacco Institute –

A: You're misinformed.

Q: Is The Tobacco Institute's function,

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number one, to lobby and, number two, to communicate to the public?

A: They didn't report to The Tobacco Institute as you're trying to say. They –

Q: You just said you went there.

MR. VANDERSTAR: Please stop arguing with the witness and let him finish answering the question.

THE WITNESS: I told you that the money came just as a matter of convenience. Nobody at The Institute other than me and the bookkeeper knew the money was coming in there.

If checks would come in – now, let me explain this. They'd come in from each of the participating companies in an amount that had been predetermined by their percentages. And those checks were not deposited in any account by The Institute but were collected, when they all arrived, and put in an envelope and mailed to Harvard or CT – or St. Louis, Missouri, Washington University, or wherever they were going. And that was it.

The Institute had nothing to do other than to put a 30 – well, I don't know, what was it – a 16-cent stamp on it in those

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days.

Q: And then you – why did you go visit to find out what was going on?

A: Because I was invited out there. I knew Dr. Lacey. And he knew that – he wanted people who were paying for it and who were involved in it – and I was – I was just sort of involved in the sense of coordinator of – of – of the funding of the thing. And certainly he would like for me to come out there. He and I were friends, in effect.

And so that's the reason I went out there. I wanted to hear, too, what they were doing, because that was my responsibility, or one of my responsibilities, was to keep up with what was going on, as best I could, not only in the legislation, not only in the economics of it, but the science of it.

Q: And did you report the results of your visits to anyone in the tobacco industry?

A: Yes. Yes, we'd report it from time to time. I'm thinking about – of course, they were invited likewise, the heads of the several companies.

Q: Were you accompanied on

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these – these visits by any members of the tobacco industry?
A: Sure. That was the purpose of the meeting. They were the ones putting the money up.
Q: Were you accompanied on these visits by anyone from the law firm of Shook, Hardy & Bacon or any of its previous names?
A: There on occasions, some – some – one or two of the lawyers there, or maybe one, would be at the – at the meetings.
Q: Was that –
A: They were experts in – in – you know, in this field.
Q: Did anyone from the law firm of Ed Jacobs accompany you on any of these trips?
A: I don't recall them.
Q: What about any –
A: I know Ed Jacobs, but I don't recall any trip.
Q: – any members of law firm of Covington & Burling?
A: I – I do not recall anybody from Covington & Burling being –
Q: How about anybody from the –
A: – on those trips, out-of-town trips.

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Q: Okay. How about anybody from the law firm of King & Spalding?
A: No.
Q: Okay. Let's move to the next one.
A: Which one is it?
Q: Dr. Edwin R. Fisher. I think you need to move one more over. Do you recall his name?
A: I'm having trouble with him now. Edward R. Fisher. I don't have any independent recollection of Dr. Fisher.
Q: Okay. We can move on. The next one is – deals with the statement by Theodor Sterling. I think we already discussed your recollection of Theodor Sterling.
A: Yeah. I remember – I remember Dr. Sterling. He was out in Vancouver or somewhere, up in Canada.
Q: And do you – do you have any independent recollection that he did any work for the tobacco industry or the CTR?
A: I couldn't – I couldn't answer for CTR. I have no knowledge at all of whether he did or whether he didn't. He – he could have – he

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could have participated in some kind of special project for the industry, but I didn't – I don't know what it would be. I couldn't – I couldn't intelligently tell you anything about it.
Q: Okay. Let's move on. What does the name – pardon me. That's a bad question. I'll rephrase it.
Do you recollect who Edward A. Horrigan is?
A: Edward A. Horrigan?
Q: Uh-huh.
A: Yeah. I believe at one time he was associated with one of the tobacco companies. I remember him.
Q: Do you have any recollection if The Tobacco Institute would have helped him prepare his testimony in 1982 for this congressional hearing?
A: 1982?
Q: That's the date of these press releases.
MR. VANDERSTAR: I missed the words.
THE WITNESS: I couldn't answer. I have –

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MR. VANDERSTAR: Was your question, did The Institute or the industry?
MS. HONDORF: Institute.
MR. VANDERSTAR: The Institute. Okay.
THE WITNESS: I don't have any – any recollection of it. I don't –
BY MS. HONDORF:
Q: Okay. Let's move on. How about Dr. Duncan Hutcheon, H-U-T-C-H-E-O-N?
A: I don't know him. I have no recollection of him at all.
Q: Do you have any recollection about what these hearings were all about in 1982?
A: No. That was – I was not as deeply involved then as I had been. They – I couldn't – I really couldn't now answer the question. I couldn't tell you the – I know Henry Waxman started – and he had a bunch of activists around him, and they wanted to change the warning notices and labels and all that. And he – I don't know whether this hearing involved that or not.
Q: How about the name Hans Eysenck, E-Y-S-E-N-C-K?

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A: He sounds like an overseas man.
Q: Do you have any recollection?
A: I don't recollect him.
Q: Okay. How about Roger D. Blackwell?
A: Roger D. Blackwell. Which release are you on now?
Q: TIMN0120744.
A: 744?
Q: I think you're one ahead of me.
A: I'm one ahead of you. Yeah, here's 44. Blackwell has got some kind of way-back-in-my-mind recollection, but I couldn't tell you what it is.
Q: But you don't know?
A: The name rings a little teeny bell, but I couldn't tell you, if my life depended on it, what his expertise was.
Q: Well, if it comes back to you, tell us.
A: Yeah, I'll let you know.
Q: How about Professor Yoram J. Wind, W-I-N-D?
A: No, I don't know him either.
Q: Okay. How about Dr. Bea J. van den Berg?

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A: No, I don't know him.
Q: I think that might be a woman. How about Henry Rothschild?
A: Henry Rothschild. No, I'm hard pressed to identify him.
Q: Dr. Leon Jacobson? We're on 748 now.
A: Yeah, 74 – yeah, I got that. Leon Jacobson. I – I can't remember him.
Q: Okay. The next one would be Dr. Domingo Aviado.
A: I remember Dr. Aviado.
Q: Do you recollect Dr. Aviado receiving any funds that you're aware of from the CTR or the tobacco industry?
A: I am not aware of – personally aware that – he did some work. I'm aware of that. Where the funds came from, you'll have to ask him.
Q: Okay. How about –
A: I sure didn't give them to him.
Q: – Jack Matthews Farris?
A: Never heard of him.
Q: Dr. Henry I. Russe – I'm sorry – R-U-S-S-E-K. We're on 751.

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A: 375.
Q: Yeah, that one.
A: That doesn't ring a bell.
Q: Okay. Oliver G. Brooke, M.D.
A: Doesn't ring a bell.
Q: Walter M. Booker?
A: No.
Q: Lawrence Kupper, K-U-P-P-E-R. He's a doctor.
A: I don't know Dr. Kupper.
Q: Okay. Dr. Katherine McDermott Herrold, H-A – H-E-R-R-O-L-D.
A: No, don't know her.
Q: And here's Dr. Yoran Wind again. Let's move on.
Roger D. Blackwell again. Let's move on. Burns W. Roper.
A: I've heard of Burns W. Roper.
Q: I'm on 760 now, 0760.
A: Yeah, I've heard of – I've heard of Dr. Roper.
Q: What's your recollection?
A: He's a pollster.
Q: Did he do work for The Tobacco Institute?

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A: Roper, I believe he's – you know, one of these opinion poll people, Roper. Sort of like Gallup. He – he has done some work for The Institute.
Q: What's your recollection of what he's done for The Institute?
A: I – I can't articulate it other than to say he took some surveys. That's his main line of work.
Q: Uh-huh.
A: On something that involved public attitudes towards tobacco and smoking. And exactly what the questions were, I couldn't tell you. I don't remember. It's been a long time ago.
Q: Do you recall what the –
A: But I remember Mr. Roper.
Q: Okay. Do you recall what the results of Mr. Roper's study were for The Tobacco Institute?
A: No, I don't.
Q: Do you recall whether Mr. Roper performed any research for The Institute pertaining to this particular testimony in 1982?
A: I have no – I don't – don't recall that.
Q: Okay. Does that mean you don't

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recall or you don't know?
A: It means I don't know.
Q: Okay.
A: Because if I – if I knew, I could recall it. You understand?
Q: Good answer.
A: You understand?
Q: Okay. The next one is Ed Horrigan. We'll pass by that one.
How about Dr. Larry Light?
A: Larry Light. How do you spell it?
L-I-G-H-T?
Q: L-I-G-H-T.
A: Just like a flashlight. I don't recall Dr. Light.
Q: Don't recall?
A: I don't recall him.
Q: Dr. Harold Mendelsohn, M-E-N-D-E-L-S-O-H-N.
A: No, I don't remember him.
Q: Okay. Let's move on. Dr. Theodore Blau. I think he was in the very beginning.
A: I think I – I think I didn't recall him.
Q: What about Dr. Hiram Langston?

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A: I recall that name. I recall that name, but I don't – I don't know why.
Q: Okay. Fair enough.
A: I have to think about it some. Is that – is that on 395?
Q: It's actually the page right before it. There's a blank sheet and then there's 394. It's the third page –
A: Oh, okay.
Q: – of the previous one.
A: Anyway, I –
Q: Okay. Curtis Judge.
A: I remember Mr. Judge quite well.
Q: And what was – how do you remember him?
A: Well, Mr. Judge – I first met him, he worked for R.J. Reynolds over here in Winston-Salem. I think he was a director of sales, the sales manager. And then he left Reynolds and went with Lorillard and became the chief executive officer of Pete Lorillard and stayed there until he retired.
Q: Do you recall The Tobacco –
A: He was – he was on the board of The Tobacco Institute.

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Q: He was on the board of The Tobacco Institute?
A: Yeah, he was, at one time.
Q: Was he ever on the Executive Committee?
A: Yeah. Oh, yes, he was on the Executive Committee.
Q: Okay. Dr. Theodore Blau, Sheldon Sommers, Edwin Fisher, we've been through those. Curtis judge again. Edward Horrigan. I think that about does it for this exhibit, sir.
MR. VANDERSTAR: All right. You mind taking a short break?
MS. HONDORF: Sure. Go ahead. Off the record.
VIDEOGRAPHER: Off record at 10:35 a.m.
(RECESS TAKEN)
VIDEOGRAPHER: On record at 10:48 a.m.
(EXHIBIT NUMBERS 17 AND 18 WERE MARKED FOR IDENTIFICATION)
BY MS. HONDORF:
Q: Mr. – sorry. Mr. Kornegay, I'm going to hand you a premarked Exhibits Number 17

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and 18 and point you – ask you if you recollect advertisements placed in those magazines by The Tobacco Institute.
MR. VANDERSTAR: Excuse me. Which is which?
MS. SALZMAN: That's the first one.
MS. HONDORF: The first one, and that's the second –
THE WITNESS: Seventeen first? Is that right.
MS. HONDORF: Uh-huh. Somebody at one time drew a circle around the second page, so you don't even need to read it. You just go to the circle.
THE WITNESS: Oh, the second – second page is – "Intellectual Digest." I don't – I don't even see any –
MS. HONDORF: It's on the second page, sir.
THE WITNESS: I thought you said not to fool with that page.
(COUNSEL INDICATES ON DOCUMENT)
Oh. I have – have trouble recalling this and when – when it took place or when it was run. Obviously, there's – there's

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a little ad here in a rather not well-known publication here, "Intellectual Digest." At least not to me. Maybe it goes to the intelligencia. I never subscribe to it.

MS. HONDORF: I knew you were going to make a comment about it.

THE WITNESS: I never subscribe to it.

BY MS. HONDORF:

Q: Do you have any recollection of The Tobacco Institute placing that ad?

A: I do not. I really do not.

Q: How about the second one, Exhibit Number 18?

A: Now, let's see. That was 1776. So it had to be back in the '70s. This one – let's see.

MR. VANDERSTAR: The crossword puzzle one?

MS. SALZMAN: Yes.

THE WITNESS: This is a crossword puzzle.

BY MS. HONDORF:

Q: At the very top on the right-hand side.

A: "Free Discussion." Likewise, I don't

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remember. I don't remember those – those ads.

Q: Who would be the person at The Tobacco Institute that could tell me about the placement of those ads?

A: Well, my – my first suggestion would be – and that's all – would be Mr. Kloepfer.

Q: Okay. Thank you. Will do it. How about Exhibit Number 19, which I'm now marking, what's your recollection of this program, after you review the document a little bit?

(EXHIBIT NUMBERS 19 AND 20 WERE MARKED FOR IDENTIFICATION)

(WITNESS REVIEWS DOCUMENT)

Do you have any recollection?

A: Yeah, this is the program that The Tobacco Institute started in the – in the '80s, mid '80s, I guess; I don't remember the exact date – on answering the criticism – or attempting to answer the criticism that was laid against the industry about the children smoking, urging children to smoke, which was a false allegation.

And the industry developed this program or plan to try to – to answer the

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criticisms that had been leveled against it wrongfully.

Q: Do you have recollection that this particular campaign, as evidenced by this first page, reached national distribution through these magazines?

A: I don't remember that phase of it. It could have. I just don't know. I remember there was a campaign developed by The Tobacco Institute stating the position of the tobacco industry on children smoking. And that was that they very adamantly opposed it. They did not want them to smoke. It was an adult habit and that they – the industry wanted the record to show that.

And these anti-tobacco people were running around accusing the industry of promoting smoking among children, which the industry denied.

Q: The document indicates that The Tobacco Institute prepared a booklet for distribution to the public called "Answers To The Most Asked Questions About Cigarettes." Do you recall that booklet?

A: I think that's true. I think that's right.

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Q: Do you recall whether that booklet received nationwide distribution?

A: Well, I don't know whether it was nationwide or not, but it was – it was – it had a larger distribution than just in Washington, D.C., or New York or – it was in several states, to say the least.

Q: Was it –

A: It really was – it was distributed by some of the school people, I think. It wasn't The Institute or the industry that distributed this. It was distributed by the PTA's or somebody like that. I was not on a day-to-day basis on this project, but that was my recollection.

Q: Well, to your knowledge, would The Tobacco Institute have provided this information to the PTA's and the school groups?

A: Well, The Tobacco Institute, as I recall, paid for the publication of the booklet. Now, who wrote the booklet, I don't – I don't – it isn't anybody at The Institute. I think they got somebody in the education world to write the booklet, somebody who was well aware of – of youngsters and the – you know, the educational world did the – did the writing.

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Q: I want to go off the record for one second.
VIDEOGRAPHER: Off record at 10:57 a.m -
(DISCUSSION OFF THE RECORD)
VIDEOGRAPHER: On record at 11:00 a.m.
MS. HONDORF: Okay. This is the for the record. We discussed off the record the fact that Mr. Kornegay's memory and his discussion of - what's the name of the organization? National Boards of Education?
MR. VANDERSTAR: Well, the organization is the National Association of State Boards of Education.
MS. HONDORF: - with respect to this particular Exhibit 19 is incorrect and we - and it's a different document.
So we're asking him again, what does he recall about the publication called "Answers To The Most Asked Questions About Cigarettes."
THE WITNESS: Let me see it.
MS. HONDORF: It's the last page, sir.
(COMMENTS OFF RECORD)

THE WITNESS: My recollection - I - I recall the - the subject matter here about - is cigarette advertising a major reason why kids smoke, but I don't - I don't recall the point of your question, really.
See, these are - these are - these are statements or propositions, or whatever you want to call them, that have been talked about in the tobacco world for years: Why do children smoke? What role does advertise - advertising have in smoking?
And this is putting it all together here that shows that advertising has little or no effect on why children smoke.
(EXHIBIT NUMBER 21 WAS MARKED FOR IDENTIFICATION)
BY MS. HONDORF:
Q: Okay. Sir, I'm going to hand you what I've marked as Exhibit 21. I premarked 20, so that's why we skipped one.
It's entitled "Answers to the Most Asked Questions About Cigarettes." And ask you whether that refreshes your memory.
MR. VANDERSTAR: About what?
MS. HONDORF: About the booklet.
THE WITNESS: The booklet,

"Answers -
The information contained in here I'm familiar with, but the specific publication I'm having trouble recalling.
BY MS. HONDORF:
Q: Okay. Let's go on to Number 20, then, entitled "The cigarette controversy eight questions and answers." And ask you if you recall this particular publication.
(DOCUMENT HANDED TO WITNESS FOR REVIEW)
A: I have a recollection of - of a publication entitled so many questions and answers. I didn't know whether it was eight or ten, but -
Q: Uh-huh.
A: - but this is in the ballpark.
Q: Do you remember one with eleven questions and answers?
A: That would be closer to the one that comes to mind first with me. This eight might have been a later version when the answer to - three of them had fallen by the wayside because - as I - my - my first impression, after all this - passage of all this time, was that there were more questions and answers than eight, if

that makes sense.
And so, if you've got one over there that says eleven or twelve, that would be the one that I think I'm - I'm really thinking about.
Q: Okay. But you don't - have no independent recollection of this particular eight answers?
A: Not the eight.
Q: Okay.
A: I remember the general subject of -
Q: Well, let's -
A: - so many questions and answers.
Q: - move on - well, let's do it this - if I wanted to know the distribution and authorship of many of these publications in this pile of exhibits, would Mr. Kloepfer be the person to answer that for me?
A: He'd be a good starting place. Let me just put it that way.
Q: Would information about distribution be in budgets or advertising accounts?
A: No, I don't think so. I wouldn't think so. Not - well, budgets usually didn't go into that much detail about - you'd have a line item on

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advertising, if you had advertising, but it wouldn't spell out the specific ads.
Q: But would it be reflected somewhere in the accounting of The Tobacco Institute, that you paid this particular company to distribute –
A: Well, I assume. There again, I don't know, because I didn't check all the books and the records. I assume that there'd be an invoice marked paid from somebody that paid for the cost of the printing.
Q: For the major time of your tenure at The Tobacco Institute, you were responsible for signing checks and things like that, correct?
A: Yeah. I had the overall responsibility for it. And when I initially became the president, I literally signed the checks.
And we grew as most things grew, back in those years. And we changed our procedures and personnel and had other people to do that. I did not have to continue to take the checks home in the evening or over the weekend and sign them. It's quite an improvement.
Q: Do you recall during your tenure that you ever had an outside press relation

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agency – and if I've misnamed this kind of organization, like let me know – like Hill and Nolten or Tiderock?
MR. VANDERSTAR: That TI had?
THE WITNESS: No, not while I was there.
MS. HONDORF: Yes, that TI had.
MR. VANDERSTAR: Okay.
THE WITNESS: That TI – not while I was there.
BY MS. HONDORF:
Q: Are you – do you have a recollection that Tiderock and Hill and Nolten did at one time provide services for the TI?
A: I've heard of those organizations. Hill and Nolten, I knew, became acquainted with somebody there. I don't even remember now who it was. But they did not, during my tenure, represent The Institute.
Q: So – so during your tenure, just to clean this up a little, you had no outside agency, like Hill and Nolten or Tiderock, giving services to The Tobacco Institute?
A: I can't say we didn't have – that we didn't have any outside services from – we

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had – we ran – from time to time, we'd run certain ads. And they were developed by outside ad agencies.
Many of them never – never run. We went through the exercise, and then in the end, decided not to run them. And there were a few of them that were actually run.
Q: Do you have a recollection of which ones those were and –
A: I couldn't tell you. I really couldn't, without – without going back and refreshing my recollection.
Q: And how would you –
A: Because this was off again/on again subject.
Q: If you wanted to refresh your recollection, how would you go about doing that?
A: I'd have to go – I'd have to go to The Institute and delve into the library or whatever they have of anything that would reflect these ads.
Q: Do you believe –
A: The ones that were – that were actually run.
Q: Is there an actual file or a

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category in the library that would exist that would tell us what advertisements were run by The Tobacco Institute?
A: I don't know. I can't answer the question. My suspicion is that there is not.
Q: Do you recall any – the outside agencies that worked on either of these ads that you ran or you didn't run?
MR. VANDERSTAR: Agency or agencies?
MS. HONDORF: Yeah.
THE WITNESS: I'm trying to think of the name of some of those agencies. But there's – there's a fellow, Bill Rooter, keeps popping in my name, as the ad –
BY MS. HONDORF:
Q: Is that Rooter & Finn?
A: Rooter & Finn, I believe that's the name of the agency.
Q: Ted Bates?
A: To what – to what – I've heard of Ted Bates, but I don't recall Ted Bates running anything for the – I just can't – I just can't remember the name.
Q: A gentleman named Hecht – is his name Bill Hecht?

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A: Who?
Q: Bill Hecht, William Hecht,
H-E-C-H-T.
A: He's not an ad agency man.
Q: Is he a lobbying person?
A: He's a lobbying person.
Q: Okay. If I wanted to find out the
name of these agencies that assisted with these
proposed and perhaps run ads, would Mr. Kloepfer
be able to help me with that?
A: He'd been one. Ann Duffin would be a good
one. She did a lot of work in this area.
Q: Okay. Let's go on to –
A: Ann had been – had worked for an agency at
one time, I think. I think.
Q: She worked for Tiderock, didn't she?
A: I don't remember who it was, but I just
know she was very sharp on ad agencies.
Q: Well, let's go to what I'm marking
as Exhibit 22, titled "In The Public Interest,
Three Decades of Initiatives by a Responsible
Cigarette Industry." And ask you if you
recollect this document.
(EXHIBIT NUMBER 22 WAS MARKED FOR IDENTIFICATION)
(DOCUMENT HANDED TO WITNESS FOR REVIEW)

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A: No, I don't. I don't. I don't know where
this came from. These obviously ran after I
left The Institute, because I don't remember.
It's a pretty good – looks like a pretty good
piece, but – it had to have been run after
I – because I don't – I really don't have any
recollection of it.
Q: Did you find a date in there?
A: '85 is the latest date in here. There's
'84, '85. But I have a – a very good feel that
this is something that was run after I passed my
oar on to somebody else to pull.
(EXHIBIT NUMBER 23 WAS MARKED FOR IDENTIFICATION)
Q: Fair enough. Exhibit Number 23,
it's a series of papers. The first page is
entitled: (Reading)
You've seen them on Good
Morning America, Today,
Tomorrow, the MacNeil/Lehrer
Report, The David Susskind
Show, and the network news.
Now hear them in person at
your club meeting or
convention.
Do you recognize this program?

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MR. VANDERSTAR: Are you marking
this –
THE WITNESS: I recognize some of
the pictures.
MR. VANDERSTAR: Excuse me. Excuse
me. Excuse me, Mr. Kornegay.
You're marking this as one
exhibit –
MS. HONDORF: Right.
MR. VANDERSTAR: – rather than four
separate ones?
MS. SALZMAN: Composite.
MR. VANDERSTAR: You're not
suggesting this is a single document, though,
are you?
MS. HONDORF: Yes, I am, certainly
am.
MS. SALZMAN: That is?
MS. HONDORF: Well, it's got
information that goes with the other thing.
We can call it a separate series of
documents. We can name it anything you'd like,
sir. They all go together.
MR. VANDERSTAR: Well, they may be
related as to subject matter, but they look as

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if they are – they look as if they might be
separate documents. And I'm just raising the
question about numbering them and treating them
as one –
MS. HONDORF: Okay.
MR. VANDERSTAR: – one document.
That's all.
MS. SALZMAN: We'll do it as a
composite.
MS. HONDORF: We're going to treat
it as one exhibit.
MR. VANDERSTAR: Call it a
composite? Okay.
MS. HONDORF: Sure.
MR. VANDERSTAR: Okay.
All right. Thank you.
MS. HONDORF: Uh-huh.
THE WITNESS: I – I don't remember
this – I know these people here, certainly
Walker Merryman and Ann Browder. And the other
young man came on towards the very, very end of
my tenure at The Institute. So – but – but
this is a publication I don't recall.
MS. HONDORF: Okay. Fair enough.
THE WITNESS: Susskind has been dead

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for several years now, you know.
BY MS. HONDORF:
Q: Uh-huh. Do you have any recollection of any of these people making speeches on behalf of The Tobacco Institute?
A: Walker Merryman, that's all – that's basically what he did.
Q: And did he prepare his own speeches, or did somebody –
A: Sure. He was good at it. See, he'd been a – he'd been a television commentator out in the Midwest, the son of a physician.
(COMMENTS OFF RECORD)
(EXHIBIT NUMBER 24 WAS MARKED FOR IDENTIFICATION)
Q: Number 24, "The Answers We Seek, A Tobacco Institute Film," dated September 1975. Do you have any recollection of that film or that document that evidences its existence?
(DOCUMENT HANDED TO WITNESS FOR REVIEW)
MR. VANDERSTAR: Twenty-four?
MS. HONDORF: Twenty-four.
THE WITNESS: "The Answers We Seek."
I have a faint recollection of it, but I don't – don't recall – I don't recall – recall it. But I was there at that

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time, '75.
And we did have a couple of movies. And one I recall so well was – was on the history of tobacco. It showed, you know, the agricultural and commercial aspects of it.
Now, this was one that obviously was interviewed – an interview of these scientists talking about smoking and health. And I do have a vague recollection of that one. To what extent and where it was shown, though, I could not tell.
BY MS. HONDORF:
Q: Did The Tobacco Institute pay for its production?
A: I – I don't – I don't know that I could tell you absolutely that it did. The chances are that it did. If – if it was taking credit for it. Did they take credit for it? It would be – if they did, it would have a – it would be accredited to The Institute. They never did anything without putting their imprimatur on it. That would be one way to tell whether they paid for it or not. I don't see that. But – '75 was when it came out.
(EXHIBIT NUMBER 25 WAS MARKED FOR IDENTIFICATION)

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Q: Okay. Let's go on to Number 25. The document entitled "Reports on Tobacco and Health Research," Volume 9, No. 1, filed 1967. And I want to ask you if you're familiar with this particular type of publication.
(DOCUMENT HANDED TO WITNESS FOR REVIEW)
A: This format is not typical of The Tobacco Institute. I don't know. I – I can't enlighten you, because, as I say, if – if – if it were put out by The Institute, that name would be on here. We would never put out anything – at least when I was there – without identifying it as ours.
Q: Could I see it?
A: We had a tag line that went on everything that was developed, incidentally, by Mr. Austern, at Covington & Burling.
Q: Uh-huh.
A: And he insisted that it be put into anything that dealt with smoking and health. This goes back early, way back. That's the reason 18 – 1735. Now, this had to be in the '50s or – early '60s, probably, because The Institute moved from 35 – 1735 in '69, early '69. I'm not –

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Q: So you're familiar with that –
A: I have no recollection.
Q: – publication being distributed by The Institute?
A: Like I told you, the format is not in keeping with the stuff that was done at The Institute. So it was early on.
Q: So your testimony is you're not aware that they distributed that particular publication while you were there?
A: That's right. I have no recollection or knowledge of the distribution of that particular thing while I was there. It's got on there the fall of '67. That was two years before I joined The Institute.
MS. HONDORF: Okay. We need to converse for a minute or two. We're either going to break or we're not going to break. And – can we go off the record for a second?
VIDEOGRAPHER: Off record at 11:21 a.m.
(RECESS TAKEN)
VIDEOGRAPHER: This is Tape Number 4 of the deposition of Horace Kornegay. The time is 11:33 a.m.

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MS. HONDORF: This is Sherrill Hondorf speaking. I just want to put on the record that the gentlemen left the room, discussed the time limitations, and decided to give us exactly an hour. And I guess that means if we need more, we'll have to deal with it in the courts. So we're going to move forward as quickly as possible.

MR. VANDERSTAR: And just to clarify –

MR. FOUTS: This is Dan Fouts on the record.

MS. HONDORF: Okay.

MR. FOUTS: We filed a motion to quash your subpoena. And we negotiated in good faith with Ms. Salzman about the time for this deposition. And we agreed on five hours, which you have already used.

And I don't believe that this witness should be prejudiced by a statement you put on the record that we'll go to court. We can go right now if you want to.

MS. HONDORF: No. It's not a problem. We attached a record that said we would do our level best to do the five hours.

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MR. FOUTS: All right. Well, let's move on.

MS. HONDORF: It's one of the exhibits.

(EXHIBIT NUMBER 26 WAS MARKED FOR IDENTIFICATION)

BY MS. HONDORF:

Q: Mr. Kornegay, I'm going to hand you what's been marked as Exhibit 26 entitled "Background For Shift In Policy," dated 3/4/81 and ask you if you have any recollection of the contents of this document.

(WITNESS REVIEWS DOCUMENT)

A: I don't. I don't have any independent recollection of this document. What was the date you say of it?

Q: I think it's on the front. It's 1981.

A: Oh, '81. I don't remember.

Q: Do you recall any discussions or efforts to reorganize the CTR?

A: I don't recall any – any discussions to – when you say "reorganize," to change the structure of it. There were conversations from time to time about personnel there that I was aware of, when a new scientific director would

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come on board and things like that.

Q: You have no recollection of any changes in the scope of the scientific inquiry by the CTR?

A: I don't have any of that.

(EXHIBIT NUMBER 27 WAS MARKED FOR IDENTIFICATION)

Q: I will hand you what's now been marked Exhibit 27 entitled "The Cigarette Controversy." It's an article with the byline of Horace R. Kornegay. And ask you do you recall this.

(WITNESS REVIEWS DOCUMENT)

A: I don't remember this particular – you know, don't have a detailed recollection of this particular thing. I don't deny the existence of it or the fact that it was prepared there at The Institute.

Q: Did you write it, do you recall?

A: And – I did not write it out as you – my name is on it and I'm responsible – I was responsible for it because I was the president.

Q: Okay. Fair enough.

(EXHIBIT NUMBER 28 WAS MARKED FOR IDENTIFICATION)

We have another article –

A: And I subscribed to what was stated in it.

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Q: We have another article entitled Exhibit 28, "Chances for Tobacco in the Coming Decade," by Horace R. Kornegay. Do you have any recollection of that?

(DOCUMENT HANDED TO WITNESS FOR REVIEW)

A: This obviously was a – a reprint of a speech that I made somewhere. And I don't remember specifically the time nor the location of it. This came out of some tobacco journal, apparently. Isn't that what – isn't that where it came from, a tobacco journal?

Q: It says on the bottom, I believe of the page, doesn't it?

A: No. It says 28. It says, I'm president of The Tobacco Institute in Washington, D.C., excerpt from a speech delivered – yes – at the Tobacco Associates annual meeting in Raleigh, North Carolina, in March.

Q: Okay. Did you – do you recall writing that speech, or did someone write it for you?

A: I think I wrote that one. When I say I wrote it, what I would do is sit down and discuss with somebody, a pensman, what I wanted to say in the speech. And they would develop it

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and come in, and then I would rework it and send it back and have it retyped.
Seldom did I – just for your information – seldom would I go in by myself and take a tablet and a pencil and write out the speech as – in its entirety.
Q: Fair enough.
A: I didn't have time to do that in those days.
Q: Exhibit Number 29, entitled "California's anti-smoking program depends on Government coercion."
(EXHIBIT NUMBER 29 WAS MARKED FOR IDENTIFICATION)
MS. SALZMAN: Califano's.
MR. VANDERSTAR: Califano's.
MS. HONDORF: What did I say?
MS. SALZMAN: California's.
MR. VANDERSTAR: California's.
MS. HONDORF: I'm sorry.
THE WITNESS: California.
MS. HONDORF: "Califano's anti-smoking program depends on Government coercion," by Horace R. Kornegay.
(DOCUMENT HANDED TO WITNESS FOR REVIEW)
THE WITNESS: Well, this is probably

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in '69 – I mean '70 – '79. Yeah, '78. So this was about a year before he got fired.
BY MS. HONDORF:
Q: Who got fired? Califano?
A: Yeah, Califano got fired by President Carter. Yeah, I know I made that speech.
Q: Can you tell us what your recollection is of the inception of The Tobacco Institute testing laboratory?
A: No, because I wasn't there. I was well aware of the testing lab, but it had been operational since before I arrived and went to work at The Institute.
The story was that the government came to the tobacco industry and sought their help in setting up the lab. They did not have the machinery. They did not have the technique. They didn't know how to do it.
And that's the reason, if you're familiar with it, that the government always accepted the figures from the TITL, as we call it, The Tobacco Institute testing lab, to go in – to put in the advertising, and for any other purposes. There was never any – any dispute in that area between the government and

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the industry.
Q: Is – is it your recollection that at one time the FTC ran their tests and the TITL ran separate tests?
A: I don't recall the – the – wait a minute. The – at one time, they were both running – it started out – it started out the – of course, the industry were running tests, so they knew how to do it, and they had the machinery.
The government didn't know how to do it. They didn't have the machinery. The industry got for the FTC the necessary machinery and they started. And then with the help of Dr. Steel, I believe his name was, who ran the testing lab, he had to go over there and show FTC how to do it.
And they got – put them in business. And then they would compare – that's right – for several years there. They would compare and they would use The Institute's figures as the official figures.
MR. VANDERSTAR: You said The Institute's figures?
THE WITNESS: Well, the TITL. They – the testing lab was – they put it under

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The Institute. It was part of The Institute. All – all they did was handle the administration of it. But Dr. Steel was the director of it.
BY MS. HONDORF:
Q: Do you recall when The Tobacco Institute testing laboratory became the only testing laboratory for tar and nicotine measurements?
A: I remember some vaguely the government came to The Institute, or to the testing lab, and through that said, Now, this is just an added expense on our part. We want to cut down on expenses. You test it and we'll use your figures.
Q: And that –
A: I don't remember exactly when it was, but I was still there at the – at The Institute. It had to be in the late '70s, probably. I'm not sure of the date.
Q: How was the TITL funded?
A: TITL was funded by the industry, the tobacco industry. It was part of the budget of The Tobacco Institute. And that was the reason it was called The Tobacco Institute testing lab.

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Q: Who runs the lab? Is it personnel from the TI?
A: I don't know who runs it now. Well –
Q: When you were at the TI, did personnel from TI run the lab?
A: Well, Dr. Steel, who – who was a part of the – The Institute – I say part of it. That's not exactly right. He was an independent – I mean not – he came to qualify to run the testing lab.
Now, whether he came out of one of the companies, I don't know. He was a chemist fundamentally. And he knew how to run – run those machines and things. And he ran it.
And his expenses and personnel were paid through The Institute. He was an independent operator to the extent that he employed the people that worked there and – that's about as much as I can tell you about it, because that's about all I know.
Q: Okay. Why don't you tell us what –
A: It was administered – the mechanics of it, in terms of the budgeting and acquisition of machine and personnel, was done through The Institute. But he passed on it. He was the one

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who selected the employees. Nobody at The Institute as such had anything to do with that end of it.
Q: Okay. Tell us what your recollection is of the funding or the relationship between the AMA and the tobacco industry, if you have any recollection?
A: Oh, boy. That's a an all-outdoor question. If you –
Q: Can you give us the short version?
MR. VANDERSTAR: Well, let me just ask you to clarify. You mean a business relationship between the two?
MS. HONDORF: I'm talking about funding of science –
MR. VANDERSTAR: The ERF – okay. Funding of science projects.
MS. HONDORF: – with the AMA. It is the ERF.
THE WITNESS: Oh, the science – oh, yeah, the ERF thing. All I can tell you, that was going on when I went to The Institute.
The initial grant arrangement was, I think, $10 million right at the end. And I'm not absolutely sure, but I think it was

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$10 million that the tobacco industry provided to the AMR – AMA-ERF, their scientific branch, to do research.

BY MS. HONDORF:

Q: What sort of research? Do you recall the subject?
A: As I recall, it was supposed to be smoking and health. Although, I don't know what they used the money for. There was some question later on, you know, about what they did with the money.
Q: Do you recall the results of any of their research?
A: I do not. They – there's a publication. They put out a publication on it.
Q: What was The Tobacco Institute's reaction to that publication?
A: I don't recall, you know. There were some that were disappointed that they hadn't – they hadn't done a better job with all the money they had taken from the industry and spent.
Q: Do you recall that The Tobacco Institute attacked that publication as bad science?
A: I don't specifically, but I'm not surprised

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to hear that, because I – I do recall that, you know, after so many years and so much money and so little information to come from it, it was a source of disappointment.
Q: I'm going to mark the next Exhibit 30. It's a press release dated February 19th, 1981.
(EXHIBIT NUMBER 30 WAS MARKED FOR IDENTIFICATION)
Ask you do you recall this and do you recall the subject matter of this press release.
(DOCUMENT HANDED TO WITNESS FOR REVIEW)
A: What's your question about this? This is just a statement –
Q: The subject matter.
A: – about tar and nicotine deliveries and the drop in it.
Q: And what –
A: The drop through the years from 1954, I would say, down to '80 where – let's see which is tar and which is nicotine. But the precipitous drop in the delivery of tar and nicotine in cigarettes, that's – that's a fact.
Q: That's what The Tobacco Institute believed at that time, that there had been an

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actual drop in tar and nicotine yields?
A: That is what The Tobacco Institute thought of –
Q: That's what I'm asking you, if that's what they believed when they put out the press release.
A: I don't know – I know the – the – the chart indicates a substantial chart. I know everybody agreed in those days that it had dropped. So are you suggesting there's something wrong with the figures?
Q: This isn't – it's not your turn to question me.
A: I know that. I'm not – I'm just amazed that you would raise any – any question about that, because as far as I can recall, this particular thing is acknowledged by even the worst enemies of tobacco, in the government and public health, and the private health organizations, that the tar and nicotine levels dropped precipitously from the mid '50s all the way – right here it shows that. I didn't know there was ever any argument about that.
Q: Did you – do you remember serving on a committee called the Industry Committee for

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the Review of Industry's Overall Independent Scientific Research Effort? It's a very large word. I don't know whether we're going to mark this or not, but if we do, we have to make a copy.
(DOCUMENT HANDED TO WITNESS FOR REVIEW)
MR. VANDERSTAR: Beth, can you read the question back so – Beth, can you read the question back so I can get it. I didn't –
MS. HONDORF: You can copy that in a minute.
MR. VANDERSTAR: Oh, okay. Never mind.
THE WITNESS: I don't – I don't know – I can't remember this.
BY MS. HONDORF:
Q: Do you recall serving on something called the Joint Committee on Tobacco and Health?
A: I don't know what it – I remember a committee that operated for a while and I – whether I was an official member of it or not, I can't recall or know. When there was – they were considering – this group was considering research and how much more research

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needed to be done or should be done, how much money to spend, this kind of thing.
And I went to two or three meetings. And that's about the extent of my recollection.
Q: Do you recall any results of that?
A: I remember there was a serious discussion of one meeting about funding a project dealing with heredity. Whatever happened – I don't think the project ever got off the ground. But that's the one thing I do remember about a meeting of that – of the group that I'm thinking about.
Now, whether we are thinking of the same group or not, I don't know. But this was – I don't remember the fancy name that you gave it.
Q: Do you recall – well, no, that's not – let me rephrase.
Do you have any thoughts about why a member of The Tobacco Institute would have been serving on that type of committee? And – and I grant you, we don't know the right name of the committee.
MR. VANDERSTAR: Well, excuse me. And he also testified that he didn't recall that

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he was an official member of the committee. So your question implies something contrary to his testimony, and I, therefore, object to it.
MS. HONDORF: Noted. Can you answer the question?
THE WITNESS: I don't – I don't remember – you see, you got to understand and realize that certainly in those days the tobacco industry was under attack. And they were out here trying to do everything they could to, number one, find out as much as they could about the health aspects of tobacco, and trying to answer their critics as best they could based on sound solid information.
And they had meetings of this and that and talked and reported on what is going on and what this one said and what that one said – I'm talking about the scientific people.
And a lot of times, people who were not scientists would be included in those meetings merely for informational purposes. And I did, and I have no apologies for going to those meetings. There wasn't anything wrong with it.
And I get a little bit upset with

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people who suggest that there was some kind of –
MR. FOUTS: Chicanery.
THE WITNESS: Chicanery – I'll get it in a minute. You see, I'm upset now – chicanery going on simply because I went to a meeting. That was my business.
BY MS. HONDORF:
Q: I was not suggesting that, sir. I'm sorry that you got –
A: Well, I'm not saying that you were, but I know where you're coming from.
(EXHIBIT NUMBER 31 WAS MARKED FOR IDENTIFICATION)
Q: Fair enough. How about Number 31, a memo to the TI staff from a gentleman named Mike Craig? Before I hand you the document, do you know who Mike Craig is? This is dated 1978.
A: The name rings a bell, but I can't place him.
Q: Take a look at the document, sir.
(DOCUMENT HANDED TO WITNESS FOR REVIEW)
A: He may have been a temporary employee there at The Institute. I think Mike Craig worked at The Institute for a fairly short period of time. And, obviously, he must have been there in the

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latter part of the '70s.
Q: That document purports to be the position of The Tobacco Institute in response to the Surgeon General's report; is that correct?
A: Let me read it.
(WITNESS REVIEWS DOCUMENT)
This I must – your question was, is this the position of The Tobacco Institute as it relates to Mr. Califano's report? I would say yes. Certainly indicates that.
Q: Fair enough.
(COMMENTS OFF RECORD)
MS. HONDORF: I'm going to mark the next document Number 32. This purports to be a document about the Tobacco Action Network. And I'm going to ask you to review it and tell me what your recollection is of the Tobacco Action Network.
(COMMENTS OFF RECORD)
(EXHIBIT NUMBER 32 WAS MARKED FOR IDENTIFICATION)
(DOCUMENT HANDED TO WITNESS FOR REVIEW)
THE WITNESS: I remember the Tobacco Action Network. I don't have any independent recollection of this document.
I assume it's telling the people

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how to write letters and whatever, who to write to.
BY MS. HONDORF:
Q: Okay. That's – was the function of the Tobacco Action Network to communicate with the public in the various states?
A: It was to encourage people in the tobacco industry, as well as any others who were concerned about what was happening to the tobacco industry as a result of the misinformation that was being put out by government and by the private health organizations, to write and try to correct the incorrect information that was being disseminated, you know, by HEW and others in the government, as well as the Cancer Society and Lung Association, people like that.
What the purpose of it, of course, was to educate these people who worked for tobacco companies, who farmed, who were involved – that was the beginning point. And if there were any others who felt strongly about it enough to write a letter, teach them how to write a letter, who it ought to go to.
You take the local merchants

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association, in – in many areas of the country were very concerned about the distortions and misrepresentations that were being foisted on the public by the anti-tobacco people. And this was really an effort to combat that and to set the record straight.
Q: To your knowledge, was any person a member of the Tobacco Action Network that was not an employee of the tobacco industry in some form or fashion?
A: Oh, yes, I'm sure there were many people who were not that way. Well, first you can start with the spouses of people who were employed. To answer your question fully, for example, my wife got letters from them. And she wasn't employed by them.
And there were the local merchants and the fertilizer dealers and, you know, people like that. People that were affiliated one way or another or connected who had an interest in the welfare of – the economic welfare of the community would – would be some of your best supporters.
Q: Okay. I'm going to mark this – let me see if I can find it for you, sir; let's mark

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it right for you – as Exhibit Number 33, dated April 5th, 1973, a letter to Leonard Zahn from Horace Kornegay, and ask you if you recall this.
(EXHIBIT NUMBER 33 WAS MARKED FOR IDENTIFICATION)
(DOCUMENT HANDED TO WITNESS FOR REVIEW)
MR. FOUTS: What was the date?
THE WITNESS: April 5, '73, 1973.
MR. VANDERSTAR: May I look at this?
MS. HONDORF: Sure.
THE WITNESS: I remember something about this.
MS. HONDORF: I think that's the film we spoke about earlier?
THE WITNESS: It could be. It could be. It was one of two. It could be.
BY MS. HONDORF:
Q: Does it refresh your recollection about any communications between the TI and the CTR?
A: No, because I don't think there was any on this.
Q: Wasn't Mr. Zahn –
A: Not to my knowledge.
Q: – employed by the CTR, or worked for the CTR?

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A: Well, he – he – he had – he had a relationship with CTR, but he also was an independent operator, contractor, if you want. He was not a full – he was not an employee. He was not full time at CTR. He had his own business of – of writing scientific reports or news stories, I guess is a better – he attended all kinds of scientific meetings and would pick up information and write stories and send them to the scientific journals.
And some of them, as I recall, didn't have anything to do with tobacco. He was not a full-time operator.
And so it was not in any capacity as a – as a – as a friend of CTR that I wrote that letter. It was because he had a – he had a network of following out there among the journals.
Q: Because he could have – he could get the message of The Tobacco Institute to the public; is that correct?
A: Well, he had – he had – obviously, he had connections that would be interested in the tobacco controversy. And if he had available information on the controversy, he could supply it to the interested parties.
Q: Fair enough.
A: CTR didn't have anything to do with it.
MR. VANDERSTAR: By the way, this – I don't think this refers to the film that you marked earlier.
MS. HONDORF: Oh, it's a different film.
MR. VANDERSTAR: It's later.
MS. HONDORF: Okay. I was mistaken. Does it have the same title?
MR. VANDERSTAR: No.
MS. HONDORF: Well, I'm mistaken. I'm sorry.
BY MS. HONDORF:
Q: Yesterday you talked about the reason why you quit smoking, because you heard that there was a brewhaha over addiction. Is that correct?
A: Well, there was a lot of talk about it.
Q: When did you first –
A: They were accusing people of – you know, the anti crowd, everybody is addicted and had no control or powers. Tobacco was so powerful, it could keep you from exercising your own free

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will and all this kind of stuff, which I knew was not so.
And so to demonstrate the unworthiness of the statement, and to my own mind, anyway, I said, I'll just do this. So I just quit.
Q: When was the first time you heard that there might be a relation between cigarettes and addiction?
A: The first time in this – and I don't – and I don t know that this is substantiated. I know it's a fact because I was there; I heard it.
There was a government group around of anti-tobacco people trying to come up with something, and they came into this area of the country. And they prevailed on some so-called doctor over at Chapel Hill to get involved.
And they got a statement out of him, and he referred to it as tobacco was additive. And somebody in this area challenged him on it and asked him what did he mean by that. Nobody knows – everybody knows tobacco isn't additive like drugs.
And he said – I said, Why did you

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use that term?
And he said, Well, it sounds so bad.
Now, this is a true story.
Q: Who was that person?
A: This – I'm trying to think of the man's name. I don't remember his name now. But it's all pretty well in the – in the – in the literature, if you want to go back and look at it.
He says the reason I use the term "addiction," it sounds so much worse, and we – and it's more impressive on people to scare them more than if we just said it was habituating or it's a habit or things like that.
And that was the first time that I can recall anybody coming up with this addiction business.
Q: Can you give me a time frame on that?
A: Late '70s. That's just a guesstimate. But I'd say in the late '70s.
Q: Do you recall The Tobacco Institute ever publishing documents, issuing press releases about the claims that cigarettes were addicting?

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A: The Tobacco Institute never claimed they were additive.
Q: No, I know. In relation to the claims by other folks that cigarettes are addicting.
A: There have been all kinds of statements made refuting the – the – the addiction statements that are put out by, you know, the enemies of tobacco.
Q: Do you have any personal opinion when the 1988 report came out on addiction, the Surgeon General's report?
A: Have any personal opinion?
Q: Uh-huh.
A: I don't remember specifically that, but I'm sure if it was – if it was like most of them, I disagreed with it.
Q: Did you review it, or did you read it?
A: In '88 I don't think I did, because that was – I had moved on by then. I had reviewed all of them up – you know, for years, beginning in '64. I say I reviewed that one. I was not involved with The Institute or the industry in '64. But I was – I was in a position to be

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interested in what it did and what it said, and I read it.
Q: Did you consider it to be an incorrect conclusion that cigarettes are additive?
A: Oh, yeah.
MR. VANDERSTAR: Are we talking '88?
THE WITNESS: I'm talking about in '88.
MS. HONDORF: Yes, we're talking about the '88 report.
THE WITNESS: Oh, yeah. I think – I think it's just as wrong as it can be. You – you know, the – the definition as I've always understood.
BY MS. HONDORF:
Q: So you believe –
A: Habituating, perhaps, yes. But additive, in the sense that you'd qualify as under the old definition of addiction, or the – the true definition, I should say, of addiction, it isn't. And it's being used simply to further prejudice the public, if you want to put it that way, against tobacco and the people who make a living out of it. And I guess that's –

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Q: Well –
A: – one of the reasons I resent it so much.
Q: Well, you're certainly entitled to do that.
A: Oh, yeah, I sure am.
Q: What do you – what is the true definition of addiction as you've just used it?
A: Well, I – there's a scientific definition of addiction, and I can give you two or three of the – of the elements of it. I don't know that I can quote it as a – as a scientist would quote it.
But one of them is that it is – number one, it requires a constantly increasing dose of whatever the additive substance is to continue to work, which tobacco doesn't qualify.
If withdrawal – if you are using it, the substance, and suspend the use of it, or withdraw from it, than you have psychological as well as physiological reactions to the lack of use of it.
For example, in – with tobacco, its generally conceded you do not have from the withdrawal symptoms, a physiological – a psychological, psychological – you may – you

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wanted – you wanted one, but you don't go into the bends. You don't start sweating like you do if you stop using heroin or morphine or any of those things.

I mean, the difference between them is like the difference between night and day. And to put tobacco or cigarettes in the same category with heroin and morphine and dope and that – is – is just totally unacceptable to me. And I can't understand why anybody with normal intelligence can't see through it.

Q: Do you believe that every person who starts smoking can stop smoking?

A: I know – no, I don't say I believe that. There's some people that can't do anything right. They got two left hands and two left feet.

But I'm saying any conscientious, normal, reasonable, intelligent person who wants to stop smoking cigarettes can stop smoking cigarettes.

Now, he may not want to. He may yield and he may continue to want to smoke. I'm sure of that.

Q: Is it your –

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A: But if – if he's got the – if he has the determination to stop, he can do it, or she can do it.

Q: So tell me if this is wrong, but it's your testimony that anybody who says they can't quit smoking does not want to quit smoking enough?

A: I think that's – don't want to quit smoking enough. They are – they are short on their desires.

Q: Why don't you tell us what you recollect about the smoking dogs. Do I need to explain that?

A: No, you don't need to explain that. That was the – really, basically a hoax, back in the early '70s, when Cuylar Hammond and Ernie – not Ernie Wynder – Cuylar Hammond, who was with the Cancer Society, and Oscar Auerbach, who was with the Veteran's Administration, took a group of beagle hounds, nice dogs, cut their throats and put in fake or artificial, I guess, tracheotomies, really, and started pumping smoke in them. And they did that for months and months. And then they slaughtered the dogs, or some of them slaughtered.

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And then they came out with a big press conference at the Waldorf Astoria Hotel, to be dramatic about it, to get the attention of the press, and said that six – I believe it was six; I don't remember the exact numbers – six of the nineteen or twenty dogs that they had slaughtered had lung cancer.

And for – and they screamed that from high heavens, that at last we've been able to produce lung cancer through the inhalation of smoke in an experimental animal, which had never been done before.

Well, as – they were immediately challenged by a lot of people, including the tobacco industry, for various reasons. And it ended up, to make a long story short, they finally retracted and found that they admitted that none of the dogs had lung cancer and it was all a fraud.

Q: They admitted that it was a fraud?

A: Well, no, they didn't call – they didn't admit it. But it was a fraud because they – the way they had handled it. They admitted that none of the dogs had lung cancer, which in and of itself makes it a fraud –

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Q: Do you recall –

A: – after they had publicized the fact they had lung cancer.

MS. HONDORF: I need to get a document. Can we take a one-minute break?

VIDEOGRAPHER: Off record at 12:16 a.m. (sic)

(RECESS TAKEN)

VIDEOGRAPHER: On record at 12:19 p.m.

MS. HONDORF: Okay. Sorry. I had to look for a document.

THE WITNESS: That's all right.

BY MS. HONDORF:

Q: Now, I'm going to show you what I'm going to mark as Exhibit 34. It's a letter to a Jonathan Rhoads of the American Cancer Society from the Surgeon General at that time. And I'm sorry, I can't read the signature.

MR. VANDERSTAR: Date?

MS. HONDORF: You probably know better than I do.

MR. VANDERSTAR: Date?

MS. HONDORF: 1970.

MS. SALZMAN: June 1st, 1970.

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THE WITNESS: '70.
MS. HONDORF: It's June 12th, I think.
THE WITNESS: That - that would be -
(EXHIBIT NUMBER 34 WAS MARKED FOR IDENTIFICATION)
BY MS. HONDORF:
Q: And ask you to review that second paragraph on this document.
A: Second paragraph.
Q: Right. For - for the time being, the second paragraph.
(WITNESS REVIEWS DOCUMENT)
(COMMENTS OFF RECORD)
A: Okay. This is - I read it.
Q: Okay.
A: The second paragraph.
Q: Right. Do you remember that?
A: I don't remember this particular paragraph. I remember the occasion, or the - the controversy that was going on at that time.
But this is - this is totally at odds with the position of the - of the Cancer Society at the time because - the public position, because they refused to let the data

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be - on the dog study now - the data from that study be analyzed by a group of independent scientists. They would not turn the data over. And I remember that well because that was a big, big operation going on there.
Now, this Surgeon General here, it must be Luther Terry. That's the only thing. He had to be the Surgeon General then. But his - his signature is very difficult. And I can understand why you couldn't tell us who he was.
See, Terry was the Surgeon General - now, wait a minute. Wait a minute.
Q: Wasn't he the Surgeon General before?
A: He was the Surgeon General when the report first came out. He - he stayed on several more years. He could have - by '70, he could have left. But it was pretty close. I - I knew Dr. Terry fairly well. And -
Q: Okay. You finished?
A: Yeah.
Q: The -
A: But this is - this is not in accordance with the facts as I understood them to be and, I

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think, that most people did.
Q: Did you - were you aware that this data had been reviewed by a pathologist for the National Cancer Institute and Dr. Raymond Yesner, a pathologist with the Veteran's Administration?
A: Well, I'm - I'm not - was not aware of it, but I'm not surprised of it. And it doesn't impress me at all insofar as causing me to reconsider what I've always understood to be the facts.
Q: And those are?
A: And those are that the - the Cancer Society and the VA, the authors of this study, absolutely refused to submit the data to an independent group of doctors. Now, the VA is not independent. These are all people coming out of the same hatch, out of the same nest.
Q: So - so it would be your -
A: So that doesn't - that doesn't help me at all.
Q: Okay. Why don't you review the first paragraph on the second page. And let me -
(WITNESS REVIEWS DOCUMENT)

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A: It's just more of the same.
Q: Doesn't change your opinion?
A: Don't change my opinion at all, because I know how those people operate.
Q: Your testimony is the review by those two gentlemen of that data was not sufficient to convince you that the data was correct?
A: That's exactly right. To overcome - to overcome two facts: Number one, they refused to let a group of independent, not people in the VA, not people in the Cancer Society, but independent scientists to review the data. That's the number one. And the other is they acknowledged - and I can't tell you chapter and verse, but they acknowledged that there was no - no human - no lung cancer found in the dogs by the inhalation of smoke.
Q: Okay. We have one final exhibit. I'm going to mark this as Exhibit 35. It's a memorandum to Bill Kloepfer from Fred Panzer. It's dated February 6, 1970. Ask you to read it. Are you familiar with it?
(EXHIBIT NUMBER 35 WAS MARKED FOR IDENTIFICATION)
(DOCUMENT HANDED TO WITNESS FOR REVIEW)

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A: I don't know about this.
Q: Wouldn't change your opinion?
A: Not without talking to Dr. Hockett or somebody else. No, I don't.
Q: Who is Dr. Hockett?
A: Dr. Hockett was - worked up at the - at CTR. He was an employee at CTR.
Q: Did he work for anyone else in the industry, or just -
A: Not to my knowledge. I - when I first met him - and I did not know him well - he was at CTR and stayed there till he retired. I don't know where he worked before he went there.
Q: Okay. Let's clear up some stuff about the way The Tobacco Institute worked.
What was the relationship, if any, between the board of directors and the Executive Committee?
MR. VANDERSTAR: I think you covered that.
THE WITNESS: Well, they were almost one and the same. Technically, they were like any corporation. You got a board of directors. And then - then for the exercise or the carrying out of the functions of the

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corporation, you in many instances select a smaller group of executives to handle the day-to-day or the business between meetings of the board of directors.
And that's what the - same arrangement here. The board of directors of The Institute met only once a year. I do not recall, the whole time I was there, of a special meeting of the board of directors.
Now, the Executive Committee, which was composed of two executives from the large companies - and there were five of them in The Institute - and one from two or three of the small companies, they were on the Executive Committee.
Usually, there were the same two that were on the board of directors, from the large companies. And the small companies were the same - so you - there was a duplication, in effect, or the same people, except a smaller group.
But on the board of directors, somebody from every member company was on it, one of them. And there were a number of small companies. Some of them did not make

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cigarettes. They were snuff or chewing tobacco or other tobacco products. They were all involved in the tobacco business.
Q: Did The Tobacco Institute have any connection at all with the organization known as ICOSI?
A: ICOSI, ICOSI, ICOSI. Was that an international - wasn't that an international - not - The Tobacco Institute didn't have anything to do with it. I remember the name. It was European, as I recall it. Or maybe - maybe worldwide.
Q: You don't recall any member, including yourself, of The Tobacco Institute attending any ICOSI meetings?
A: I do not.
Q: Okay.
MS. HONDORF: Let's mark as Exhibit 36 -
We only have one copy. I'm sorry.
THE WITNESS: The only - wait a minute. Let me go back to that.
Now, ICOSI, I don't remember ever - I attended one, so the record will be straight, as far as I'm - let's see. I think

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one international meeting in Switzerland at one time. Now, whether it was ICOSI or not, I don't know. But there were a number of representatives from other countries there. And I don't recall what the name of the group was. But ICOSI doesn't ring a bell with me on it.
BY MS. HONDORF:
Q: Does INFOTAB ring a bell?
A: INFOTAB. I've heard that name, but here again, this was way back in the '70s, and I - I can't - I don't have the memory of - recollection of what it was. But it was an international tobacco meeting.
Q: Okay.
(COMMENTS OFF RECORD)
(EXHIBIT NUMBER 36 WAS MARKED FOR IDENTIFICATION)
I'll show you a document marked Exhibit Number 36. This is a Liggett document. It's a memo to Mr. Harrington dated February 26, 1971. Do you recall who Mr. Harrington is?
A: Uh-huh. Yeah, I knew Mr. Harrington.
Q: Who is he?
A: He was the chief executive officer of Liggett - Liggett & Meyers Tobacco Company, down in Durham.

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Q: He makes reference in this document to your opinion - I want to know whether you agree with this - that you feel that - well, let me have you read paragraph 3, and tell me whether that would be a fair statement.

A: Paragraph 3?

(WITNESS REVIEWS DOCUMENT)

What's your - what's your question with reference to this paragraph?

Q: Is that a fair statement about your opinions about what's going on on the Hill?

A: It - I'm sure it was at the time, at the time that this was written. See, we're talking about 26 years ago, 27. Almost 27 years now. And it was the - it was sort of the beginning of the slippery slope, as I would call it, of trying to deal with and work with, in a reasonable way, the government and others on - other enemies of tobacco and capitulating on certain things that we thought they were interested in.

And the more you gave them, the more they wanted. And next month or next year, it was something else. And it was always, until, you know, the - the tail's eaten the dog, or

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whatever - whatever the old saying is.

So that - I was sure that was a pretty fair statement of - that they were - of putting the warning notice out that would do what they said at that time they wanted, that they felt was necessary.

Q: So let me ask one final question, because I know we're a few minutes over our limit.

It would be your testimony that The Tobacco Institute and the industry thought that if they compromised with the government, they could resist regulation; is that correct?

A: Well, that's not - you don't put it quite like we thought it to be. Let me put it my way: The industry thought if they compromised - if they - if they, rather than comp - if they did what the - the people said they wanted, the enemies of tobacco - I keep referring to them - I'm talking about the Senator Mosses of that time. This was before the Waxmans came on the scene. If they did what they indicated they thought ought to be done, then that would be it.

If you - and we started, literally, with putting tar and nicotine in the advertising

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in the '70s, I guess, or '71. Thought that would do.

Okay. They were quiet for about six months, and then they pipe up again: This is terrible. And they start all this stuff going. We have to add the warnings in there. The cigarette warnings have got to be. So we put the caution notice, it was then, in and said, Well, this ought to satisfy.

Well, you're never going to satisfy them, because that's not what they're interested in. They're not interested in warnings and they're not interested in information. They're interested in doing away with tobacco.

Now, you may find that hard to believe, but I think it's the truth.

MS. HONDORF: Mr. Kornegay, I appreciate the time you've given us.

THE WITNESS: Well, thank you.

MS. HONDORF: We're going to review the record, and hopefully, we won't have to come back.

Or go to court, Mr. Fouts.

THE WITNESS: Well, I hope you don't either. We'd like to see you on more pleasant

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circumstances. But - and if you will come back, we'll take you and feed you - without any business, we'll feed you some good barbecue.

MS. HONDORF: It's a deal.

THE WITNESS: Somebody from Cincinnati ought to like barbecue. It's close enough to Morganfield, Kentucky.

MS. HONDORF: We have our own, The Ribs King.

Are we off the record?

VIDEOGRAPHER: Not yet.

MR. VANDERSTAR: Not yet.

THE WITNESS: Well, what time do we want to come back -

MR. VANDERSTAR: Let's break for lunch for - what is it, twenty of one?

THE WITNESS: Yeah.

MR. VANDERSTAR: Is that right?

THE WITNESS: Twenty-one of one.

MR. VANDERSTAR: Twenty-one of one. Let's break for lunch until two, and we'll come back and see if we have any questions to clarify anything that's been -

MS. HONDORF: All right.

MR. VANDERSTAR: Okay.

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VIDEOGRAPHER: Off record at 12:38 p.m.

(LUNCH RECESS TAKEN)

VIDEOGRAPHER: On record at 1:59 p.m.

MR. VANDERSTAR: Thank you.

EXAMINATION
BY MR. VANDERSTAR:

Q: Mr. Kornegay, I have a couple of questions I'd like to ask you to clarify a couple of things that have come up in your earlier testimony.

The first one is your personal background. You mentioned briefly that you had been in the service during World War II. And I wonder if you'd tell the court and jury a little bit more about that, what branch of service were you in, how long were you in, where did you serve, and that sort of thing.

A: Yes, sir, I'd be glad to.

Q: Okay.

A: December '42, about a year after Pearl Harbor, I was in college down at the Old Wake Forest, which is north of Raleigh, and things were getting pretty hot, you know, Guadalcanal.

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So I – I decided one day to go over and enlist.

So I went to Raleigh. You had to do that, go over to the state capital and go into the recruiting office. So I just went over and enlisted.

I had a little advance information that by enlisting they indicated that – I'm talking about the recruitment people – indicated that they probably would not call you before two or three months. And that would give me enough time to complete that term, the fall semester, and get that behind me before I actually went into the service.

So I enlisted actually in the Air Corps. I wanted to be a flier. Well, it ends up they – about 30 days from then, or maybe even less, they sent me this notice to report – to report to Miami Beach.

Q: Miami Beach?

A: Miami Beach. They had a training – in those days, the basic training center for the Air corps. Now, bear in mind, before the day of the Air Force, it was the Army Air corps. So they had the training center down at Miami Beach.

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So they sent me a ticket down there. And I went down to Miami Beach and stayed there and went through basic training, came – the next thing I knew, they started testing people. And they gave me some tests.

And in a couple of three months, they said, You're qualified to go back to college.

I said, What are you talking about? They said, Well, we've got a program now called the ASTP program in the Army, the Army Specialized Training Program, and said, and we'll give you some more tests and see what – where your aptitudes are. You can go and learn a foreign language. You can go and be an engineer. You can go and do a lot of different things.

And so they – I said, Yeah, let me take the test.

So I took the test and they came back and said, We think you'd make a good engineer. At least you'd be a better engineer than you would linguist.

I said, Well, you're right about that. I had already studied French for four

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years, and I couldn't hardly say bonjour, you know.

Well, they sent me to Georgia Tech, through The Citadel. I went to The Citadel for further classifications. And then they sent me over to Georgia Tech, and I stayed there for nine months and got two years' worth of engineering in, basic mechanical engineering.

And then they were really getting ready for the invasion of Europe. They didn't tell us that at the time, but we now know that's what happened. So they broke up the outfit over there at Georgia Tech and elsewhere, at other schools, and sent us to Fort Bragg, and I ended up in the 100th Infantry Division.

They gave me basic training all over again as – and I studied that time to be a machine gunner, a 30 caliber heavy machine gunner, water cooled.

Q: What happened to the engineering training?

A: Well, that was postponed.

Q: Oh.

A: Then – they said it would help me in figuring out to level this water-cooled,

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belt-fed, recoiled operated M1 Browning machine gun, World War I vintage.
So – well, to make a long story short, I went through that, and I qualified as an expert infantryman there. And they gave me five more dollars a month.
So then, first thing you knew, they said, We're going – we're going to send you overseas. So they sent the whole division over for the – really, we were the first contingency of troops to go into Southern France, after the initial invasion. I wasn't in the initial invasion.
We pulled up out in the middle of the Mediterranean sometime one night and started offloading onto LCI's. That's landing craft infantry. And we went ashore in there and then went up the Rhone River valley.
I don't know how much detail you want. I can tell you more.
Q: Well, that – that gets us – that gets you to France.
A: That gets – that gets me to France. And we didn't face too much combat until we got up pretty much into the Beauj Mountains, if you

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know where they are.
Q: Uh-huh.
A: And we fought our way up to Baccarat. And I got hit there, wounded there, and went back to the hospital and stayed about three weeks. And the scabs came on my wounds, and they sent me back in time for the – right about the time the Battle of the Bulge.
Q: Uh-huh.
A: Now, the Battle of the Bulge took place up in the First Army Sector, really. But they pulled the – they had them on the western front like this: 1st – U.S. 1st Army; 3rd Army, which is Patton; 7th Army, which was our army; and then above that, the 9th Army, I think, was up above.
But, anyway, they – when the Germans broke through in the Ardennes and went – looked like they were going to go all the way to the English coast, the English Channel, they pulled Patton out of his sector and moved him up to try to hold the Germans. And then they had to spread the 7th Army out, which was our army, to cover all of that area.
So we – we did that for a while,

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and then we got hit pretty hard the first of – the first of January.
Q: This is '40 – '45 now?
A: In '45 now. I'm in '45. New Year's Eve was when it really hit.
Q: Uh-huh.
A: And I had gotten back Christmas Eve –
Q: Uh-huh.
A: – from the hospital, back into the – back into the infantry, in the machine gun nest.
So we went on and ended up – I ended up down in Southern Germany and go through – I can give you all the towns, or a lot of them, that we went through. But followed generally up the Rhine River and crossed the Rhine at Ludwigshafen and Mannheim –
Q: Uh-huh.
A: – and then turned down the Neckar and went down through Heidelberg. Beautiful town, Heidelberg. And it was an open city, so it was not destroyed –
Q: Uh-huh.
A: – as most of those German cities in that area were.
And we ended up down around – way

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down there on the Danube River, really, and stayed there and they – they converted us into constabulary, because a number of the Russian troops had come through, and they were just killing everybody, civilians, old men and women. It was horrible. And we were supposed to stop all of that. The American troops were then really in effect fighting for – with the Germans –
Q: Uh-huh.
A: – to save – to save the massacres that were going on by the Russians.
So after about two months of that, directing traffic and handling the DP's – displaced persons, they call them DP's – we were put on a train of forty and eight, forty men or eight horses, ride in a car, on stacks of straw. That was your bed and your AK rations, sea rations.
Two weeks later, ended up down in Marseilles on the banks of the Mediterranean, in a staging area called Calais, Calais staging area, and waiting for a ship to go to Japan. It was preparatory to the invasion of Japan. And stayed there for about 60 days, I guess.

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And thank goodness - maybe not 60 days, but until the atomic bomb was dropped. And we were there and dropped that. Of course, that ended the journey towards Japan, very much -

Q: So you were - you were slated to be part of the invasion of Japan?

A: Yeah.

Q: And you didn't have to because -

A: As well as about 300,000 others.

Q: Sure. Okay.

A: So I didn't have to go when Mr. Truman dropped the atomic bomb. And, of course, we were rather pleased with that.

Q: Uh-huh.

A: We didn't particularly relish going over to Japan for that invasion, because it would have been a tough one.

So hanging around then, it was a question of trying to get home.

Q: Uh-huh.

A: And you had to - there were so many millions of American troops over there, they came out with a point system. You got five points for every time you got wounded. You got

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five points for every invasion you made. You got one point a month you served, and all kinds of things like that.

Well, I had some points but not enough to get home. Some of the men I was with at that time had been over there for two, three years, all the way through North Africa, Sicily, Italy, and they - they were entitled to get home first.

Anyway, I'm still suffering from an injury, and a ruptured ear that had come about. And after the war was over, they put me - they had to ZI me. You know what ZI means?

Q: ZI?

A: ZI. They go in and say, Well, listen, I think we ought to ZI you.

I said, Well, that's good. That means zone of interior. That's where General - that's what they do, send you back. The U.S. was the zone of interior. So that was very pleasing to me.

And to show you how politics even worked in the - in the Army, the first doctor I ran into, Peter, had graduated from Davidson College over here. And I had my Wake Forest

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class ring on.

And he looked at it: You go to Wake Forest?

I said, I sure did.

He said, Well, I went to Davidson.

I said, That's the greatest school I've ever heard of.

He said and then he went to med school over at Bowman Gray. And so he looked at me and said, I believe you ought to be ZI'd. I'm going to recommend you to the - to the board to be sent back to the United States.

I said, Well - and he was a captain - a major, I think. I said, Major, I sure hope you'll be here to go before the board with me and recommend.

He says, I'd love to, says, but I'm due to leave here this afternoon. I'm on my way home.

When he left, I didn't have a - a lawyer to plead my case.

Q: Plead your case.

A: But, anyway, I -

Q: But you eventually got home?

A: I eventually got home.

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Q: And got mustered out?

A: Uh-huh. Pretty soon after I got home, I went back to the hospital and they patched me up some more. And then I got out in time to go back for the second semester in 1946.

Q: All right. So did you - did you then finish college at - where, at Wake Forest?

MS. HONDORF: Okay. Wait a minute. I've got to put an objection on the record.

Are we finished with the recounting of your service?

THE WITNESS: Well, unless you want to hear more?

MS. HONDORF: No. I'm going to object to the relevancy of this narrative, as entertaining as it might have been, and ask you, Mr. Fouts, is there any limitation on The Tobacco Institute in their questioning.

MR. FOUTS: In terms of time?

MS. HONDORF: Uh-huh.

MR. FOUTS: It will be less than you took.

MS. HONDORF: But is there - did you have an agreement -

MR. FOUTS: No, ma'am, I did not.

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MS. HONDORF: Okay. But I'm going to place that objection on the record as to the relevancy of that testimony.
MR. VANDERSTAR: Okay. We'll just go ahead and move on.
BY MR. VANDERSTAR:
Q: All right. Now, after you got out of the service - by the way, were you decorated?
A: (Witness nods head)
Q: What did you get?
A: Combat Infantryman's Badge, Purple Heart, Bronze Star.
Q: Okay. And then you went back to college to, where, Wake Forest?
A: Wake Forest.
Q: And you finished, got your degree?
A: Uh-huh.
Q: And was that an undergraduate -
A: I finished. I got an undergraduate degree in the spring of '47.
Q: All right.
A: Some of the work that I'd taken at Georgia Tech was transferable.
Q: Okay.

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A: See, I had a year and a half at Wake Forest before I went in. And then the equivalent of two years at Georgia Tech because we went around the clock, so to speak. And then I went to law school. And I went to law school at Wake Forest.
Q: All right. And when did you get your law degree?
A: And I took - got my law degree in June of 1949.
Q: Then what did you do?
A: I got my license, passed the bar before I got my degree. I got that license in March of '49.
Q: All right.
A: I came back to Greensboro, my hometown, and opened a law office.
Q: Uh-huh.
A: And started practicing.
Q: How long did you practice as a private lawyer here in Greensboro?
A: As a private lawyer, single, by myself, for about the first year, first eight or ten months.
Q: Then what?
A: And then I was invited to join in a

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partnership with an older lawyer who was a sole practitioner here, Edward M. Stanley, who later became the federal judge, district judge here.
Q: How long did you and Mr. Stanley practice?
A: We practiced together for a couple of years when - he was a republican and I was a democrat. And when General Eisenhower was elected president in '53 - wasn't it - I believe -
Q: Elected in '52.
A: Elected in '52 but he went into office in '53. He ended the Korean War, and Mr. Stanley became United States attorney, was appointed by Eisenhower. And I became the assistant district state prosecuting attorney.
Q: In Greensboro?
A: The assistant in Guilford County, really.
Q: Yeah. And how long were you a prosecutor?
A: Three years in that job. And then I was out for a year back into private practice. And then my predecessor had been in for eight years. He did not seek re-election. And I ran for the job and was elected in 1954.

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Q: So that was as what? Elected as what?
A: Prosecutor.
Q: Prosecutor?
A: District - well, it's now called district attorney. We called it district solicitor in those days. The prosecutor was referred to as a solicitor.
Q: All right. Let's move forward a little bit. Did you - did there come a time, Mr. Kornegay, when you ran for the U.S. Congress?
A: There did.
Q: When was that?
A: The first time I ran was in 1960.
Q: And were you elected?
A: I was.
Q: And did you serve in the U.S. Congress?
A: I did.
Q: The House of Representatives?
A: The House of Representatives.
Q: And for how many terms did you serve?
A: Four terms.

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Q: Consecutive?
A: Eight years. Consecutive.
Q: So that would take us till the end of '68. Did you run again in '68?
A: No, I did not run in '68. I announced in - in '67 that I was not going to run again.
Q: All right. So after you finished your term in Congress the end of '68, what did you do?
A: When I got out in '60 - January of '69, I went with The Tobacco Institute.
Q: All right.
A: And in the intervening period, after I announced that I wasn't going to seek re-election, I was approached by the then head of The Tobacco Institute, Senator Clements. He'd been the senator from Kentucky. And he asked me if I would be interested in staying over and working there at The Institute for a while.
And to make a long story short, first I said, no, I want to go home. But he - Earle was a fellow, he never took no for an answer. And he'd keep coming back. And we'd talk some more. And finally he convinced me

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that I ought to stay for a while. And I did.
Q: All right. So then you went to The Institute in, what, the first -
A: I went January of -
Q: '69?
A: '69.
Q: And then you've already testified you became president the following -
A: I became - the following year I became president.
Q: Yeah. All right.
(EXHIBIT NUMBER 37 WAS MARKED FOR IDENTIFICATION)
All right. That gets us up to there. Now, let me - let me show you what I believe, there will be no doubt, is the Certificate of Incorporation, which I've marked as Exhibit 37, of The Tobacco Institute. Now, this is dated 1958. But you've seen this before, haven't you?
A: Uh-huh.
Q: You have -
A: This is the articles of incorporation, the charter.
Q: All right. And does it set forth -
A: Of The Tobacco Institute.

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Q: Does it set forth on the first page in the long paragraph 2 the purposes for which the TI was formed?
A: Yes, sir, it does.
MS. SALZMAN: Excuse me. What number is this?
MS. HONDORF: Thirty-seven.
MR. VANDERSTAR: Thirty-seven.
THE WITNESS: Thirty-seven.
BY MR. VANDERSTAR:
Q: Now, without reading all that language, if you'd just sort of put that aside for a moment, Mr. Kornegay, and would you summarize in your own words what the purposes of The Tobacco Institute were while you were its president. What was its mission?
MS. HONDORF: Objection. I think I - this has already been asked and answered, hasn't it?
MS. SALZMAN: Yes.
MR. VANDERSTAR: Your objection is noted.
You may go ahead and answer.
THE WITNESS: Well, it - the purpose is to promote the better understanding

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by the public of the tobacco industry and its place in the national economy; to cooperate with governmental agencies and public officials with reference to the tobacco industry; to collect and disseminate information relating to the use of tobacco, and further to collect and disseminate scientific and medical materials relating to tobacco; to collect and disseminate information relating to the tobacco industry published or released by any government agency, federal or state, or from other sources independent of the industry; to collect and disseminate information relating to legislative and administrative developments, both federal and state level; and generally to promote public good will, to carry out any and all of the activities to acquire, hold, and dispose of such property, real or personal, as may be required for the conduct of the affairs of the - of the industry - or The Institute.
BY MR. VANDERSTAR:
Q: All right. Now, while you were its president, were those purposes as set forth in this certificate of incorporation followed?
A: Yes, sir.

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Q: Now, there's a -
A: Very closely.
Q: There's a proviso in this long paragraph 2. Do you see that underlined, "Provided however"?
A: "Provided however."
Q: Will you read that so that we - I can ask you a question about it.
A: Yes sir. The proviso stated - states as follows: (Reading)
That the corporation shall have no power to participate in any activity or give consideration to any matters relating to the management or control of any of its members or to the operations by any of its members of their respective businesses, including, without limitation, matters relating to the purchase manufacture, transportation, advertising, pricing or marketing of tobacco or

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tobacco products.
Q: All right. Now, did you in your administration of the affairs of The Tobacco Institute while you were its president observe that limitation on its authority?
A: Yes, sir, we certainly did.
Q: All right. All right. Let me turn to something else. You can put that one aside.
You were asked some questions earlier today about a Joint Committee on Tobacco and Health. Do you recall being asked about that?
A: Yeah. I - I think it's come up more than once.
Q: All right. All right.
A: Yeah, I remember.
Q: You're aware - you're aware of that?
A: Yeah, I'm aware of it coming up.
Q: Let me first - let me first mark and ask you to identify, if you can, two exhibits that I've marked as Exhibits 38 and 39. It would be easier to take them together.
(EXHIBIT NUMBER 38 AND 39 WERE MARKED FOR IDENTIFICATION)

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(DOCUMENTS HANDED TO WITNESS FOR REVIEW)
MS. SALZMAN: Which one is 38 and which one is 39?
MR. VANDERSTAR: The earlier one is 38 and the later one is 39.
(WITNESS REVIEWS DOCUMENTS)
(EXHIBIT NUMBER 40 WAS MARKED FOR IDENTIFICATION)
BY MR. VANDERSTAR:
Q: All right. Now, I've shown you this correspondence between Senator Clements from the TI and the Secretary of HEW, which was John Gardner at that time. All right?
And I see I need to show you one more document which I've marked as Exhibit 40. And if you'll just note that that is minutes of a meeting of the Tobacco Working Group, do you see that, in late '68?
And if you'll look at agenda item number 2, at the foot of that first page, and just glance at that item, which carries over to the next page, and just read the opening paragraph of that. And then I'm going to ask you some questions.
(WITNESS REVIEWS DOCUMENT)
Now, here's my question: You see

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the reference in Exhibit 40 to a Joint Committee on Tobacco and Health. That's in that agenda, item 2. Do you see that?
A: Uh-huh.
Q: And you see who is supposed to be on that. When you came aboard, which is just a few months after this document, what was your understanding of what was going on that led to the formation of this Joint Committee on Tobacco and Health? What was that all about, as you understood it?
A: At that time, my recollection is there was a good bit of discussion certainly on the part of the industry, and I thought with the government, as well, about what, for lack of a better term, was called at that time gaps in knowledge, the lack of knowledge, which was acknowledged, on the question of what disease, if any, cigarette smoking was causing.
And there was - the - the insufficient knowledge that was generally acknowledged by most people, the idea was to gather and agree in what areas research needed to be done in order to find the answers, if they are there, to what could be done to eliminate

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the problems of those, quote/unquote, gaps in knowledge.
Q: You said "agree." Who – who was to agree –
A: Well –
Q: – on what research needed to be done?
A: – agree may be – well, it was – it was certainly – I know this from my association with Earle Clements who was involved with this; I was not – that the goal was to try to get the government to – if not agree, to not be hostile to this effort to seek and find out what areas ought to be and needed to be researched, if – if that makes sense to you.
Q: All right. All right. And – and if you'll look back at Exhibit 39, which is – I'm sorry – Exhibit 38 –
A: Thirty-eight.
Q: – which is the letter from the Secretary of HEW –
A: Coming from Gardner, Dr. – Mr. Gardner.
Q: – Mr. Gardner – to Senator Clements, does that express, to your way of thinking, the cooperation you were talking

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about, or at least the beginning of it?
A: Well, it's – it's an indication of – in a way, and yet it sort of sidesteps it in another way.
Q: All right.
A: If you understand what I mean.
Q: Yes.
A: He goes over here: (Reading)
Much of this research, as you know, has not been directed at the questions raised in your letter –
Q: Okay. But now –
A: (Reading)
– but rather the pharmacologic effects of nicotine.
Q: Now, let's – let's trace the development. Senator Clements, in responding to that – now we're on Exhibit 39 – responding to the Secretary's letter, and if you'll look at the next-to-the-last paragraph, which is on the second page, just take a look at that, which expresses the industry's view.
A: Yes. To: (Reading)

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– determine the full facts about smoking and health –
Q: All right.
A: (Reading)
– and what role, if any, smoking may play in the diseases that have been reported to be statistically associated with smoking.
Q: Okay. Now, move to the Exhibit 40, which is those minutes. And in that agenda item 2, I believe it identifies who will be the representatives or the members of the Joint Committee on Tobacco and Health, does it not?
A: Yes, sir.
Q: And those are people who represent both government and industry; is that correct?
A: That's – that's correct.
Q: I mean, take a look at just the –
A: Let me be sure – the – certainly the government is well represented. And AMA is well represented.
Q: Yeah.
A: The Scientific Advisory Board of the

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Council for Tobacco Research, Dr. Richard Bing, Clarence Cook Little, Sheldon Sommers.
Q: And those are two names that have come up earlier.
A: They are – they are – they are with the CTR.
Q: CTR people. All right. And then –
A: The advisory.
Q: And then look at the next one.
A: And then the next one is Earle Clements and Phil – and then some company representatives –
Q: Right.
A: – are there.
Q: So now we're talking about a joint –
A: A joint committee or a joint group.
Q: And joint meaning what? Who's joining?
A: Well, the – the government, the – the AMA, and the tobacco industry, The Institute or CTR and representatives from the several companies.
Q: All right.
A: It's – now, Endicott was with the government. So was Dr. Baker and Mitchell.

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Kotin shows up here. National Heart Institute.
Q: Is that part of NIH?
A: NIH.
Q: Uh-huh.
A: Yeah. So NIH, the Heart Institute, and also the National Institute of Allergy and Infectious Diseases. Then you move into the AMA-ER - ERF.
Q: And what does ERF stand for?
A: The - stands for Research - Education and Research Foundation.
Q: Of the American Medical Association?
A: Of the AMA, American Medical Association.
Q: All right.
A: Yes, sir, that's true.
Q: All right. Now, let me show you the next exhibit, just to continue the story into your administration. And that is what I've had marked as Exhibit 41.
(EXHIBIT NUMBER 41 WAS MARKED FOR IDENTIFICATION)
And if you'll take a look at that and then tell us what that is.
MS. HONDORF: This has never been produced to us. It doesn't have a TIMN number on it. Doesn't look like it's ever been

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produced before.
MR. VANDERSTAR: Maybe not.
MS. SALZMAN: Do you know if this document -
MS. HONDORF: Well, I call that a problem.
MS. SALZMAN: Do you know if this document has been produced to the plaintiff?
MR. VANDERSTAR: I don't - I don't know.
MS. SALZMAN: Did you get if from the Minnesota depository?
MR. VANDERSTAR: I can't answer any questions about its production. We'll look into -
MS. HONDORF: Well, I'm going to object to your using it and we don't have it -
MR. VANDERSTAR: Then you can object.
MS. HONDORF: I'm objecting. I'm going to object to asking any questions about it also.
MR. VANDERSTAR: All right. Your objection is in the record.

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BY MR. VANDERSTAR:
Q: Are you taking a look at that, Mr. Kornegay?
A: Uh-huh. Appears to be a statement that I prepared, or was prepared under my name, for the "Wilson Daily Times" in Wilson, North Carolina.
Q: And does this relate to the same gap in knowledge?
A: It relates to the gap in knowledge.
Q: And does it also relate to -
A: Quoting Walter Lippmann.
Q: Does it also relate to cooperation between the industry and the government?
A: Uh-huh. (Reading)
At long last, key Congressional and Administrative leaders recognize that a knowledge gap exists and have called for a cooperate effort to eliminate it.
Q: Okay.
A: I think that sizes it up.
Q: All right. Now, during your administration of The Tobacco Institute as

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president in the '70s, did there come a time when there was a change in the relationship between the industry and the government?
A: Yes.
Q: When there was a change in administration in Washington?
A: Yes.
Q: And what was the change in administration that led to that change of relationship in the late '70s?
A: Was your question, what led to that change?
Q: What - what was the change in administration in Washington that resulted in -
A: They became more - much more hostile -
Q: All right. Was there a new Secretary -
A: - towards the tobacco industry.
Q: Was there a new Secretary of HEW?
A: Oh, yes, yes.
Q: Who was that?
A: A change of administration.
Q: Who was that?
A: That's what I'm trying - I'm trying to think. I haven't studied that. Of course, we got Mr. Califano.

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Q: That's who I'm looking for.
A: If – that was when the abrupt change took place.
Q: All right. That was in the late '70s?
A: Yeah. Under the Carter Administration.
Q: Okay.
A: Jimmy Carter.
Q: Let me show you what's been marked as Exhibit 42.
(EXHIBIT NUMBER 42 WAS MARKED FOR IDENTIFICATION)
MS. HONDORF: This also has not been produced in the New York case. I'm going to object to any use of this document.
BY MR. VANDERSTAR:
Q: And what is that, Mr. Kornegay, Exhibit 42?
A: That indicates the remarks that I made at the Tobacco Workers Conference in Orlando, Florida, in January the 15th, '79.
Q: All right. Want to take a look at it and just tell us what you talked about.
(WITNESS REVIEWS DOCUMENT)
A: Well, it's – it talks about Mr. Califano. And the newspaper, "The Post," I guess, "The

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Washington Post," accuses The Institute of lashing out at Mr. Califano, and describing him:
– as a crazed reformer
[who] continues to reject scientific linkage of health problems with cigarettes, intensifying its campaign to promote smoking as a personal-rights area in which the federal government has no business meddling.
Q: Now, is that – is that, according to your understanding here, "The Washington Post" claiming The Tobacco Institute is rejecting linkage?
A: Yeah. I think that's what they tried to say.
Q: All right. And what – what is this – what does this phrase "scientific linkage" mean to you?
A: It means, to me, the theory or the – I'm trying to think of the term that – that we use fairly often. In other words, the – the linkage is the – is the – is the government's or the AM – Heart Association, Lung and Cancer

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Society, linking ill health to cigarette smoking.
Q: All right.
A: And that's what I think this term means.
Q: All right.
A: The scientific linkage.
Q: And look at the top of page 2 –
A: In other words, they – this "Post" article says that The Institute continues to reject the proposition that cigarette smoking causes the dreaded diseases –
Q: All right.
A: – that have been attributed to it.
Q: Now, was there – was there another element to this, which is the so-called statistical association –
A: Well, the –
Q: – between smoking and health?
A: Well, the – the statistical association is there.
Q: All right.
A: And – but that doesn't – then this is where the argument comes in between the tobacco people and the tobacco haters, I call them – because it's not true with everybody – is

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that – ask your question again.
Q: All right.
A: I'm – I'm – I'm tired.
Q: What I want to do –
A: I'm really tired.
Q: – is to identify the concept of statistical association –
A: Statistical association. Okay. Okay. You've got me.
Q: – and the concept of causation –
A: You got –
Q: – and ask you how those two are put together in people's minds. Can you just address that?
A: Well – well, as I see it, you take statistical correlations, where you – a preponderance of a certain group of population of people, certain things happen to them. That's an association.
Q: All right.
A: But that doesn't prove that whatever they were doing causes the malady or the misfunction that they – that befalls them.
Q: All right.
A: What we say is, while there is a

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statistical association, that in and of itself does not prove causation.
Q: Okay.
A: You can't take those – those theories, using pure numbers, and come up with a cause for – it may be – it may be an indicator or a pointer, but it takes more than just a statistical association to prove cause and effect.
Q: Now, did the industry, to your knowledge, while you were involved with The Tobacco Institute, ever deny that there was a statistical association?
A: Not to my knowledge.
Q: All right. Would you look at page 2 –
A: Not to my knowledge.
Q: – of this document that's in front of you, your own article.
A: You're talking about –
Q: Exhibit 42, your 1979 –
A: – 42, the speech down at the Tobacco Workers Conference?
Q: Right. Look at the top of page 2, please.

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A: "Let me set the record straight again."
Q: All right. What's the first point you make?
A: (Reading)
The Tobacco Institute does not reject the linkage of health problems with cigarettes. We simply point out again and again that linkage means statistical association. It does not mean proof of cause and effect. The original Surgeon General's report admitted as much 15 years ago. That a statistical association cannot establish cause and effect is a fundamental principle of science.
Q: And that was the TI's position throughout your administration?
A: That's right. That's exactly right.
Q: All right. All right. Thank you. All right. Let me turn to one other thing, and I'm about done.

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There was a reference in your earlier testimony, Mr. Kornegay, to a Dr. Rosenblatt. Do you remember that name coming up, Dr. Rosenblatt?
A: Yes, sir, I think I do.
Q: All right.
A: He was a researcher.
(EXHIBIT NUMBER 43 WAS MARKED FOR IDENTIFICATION)
Q: Let me show you what has been marked as Exhibit 43, which I will represent for the record is a cover page, table of contents, and certain pages of the transcript of a hearing before a Committee of the House of Representatives in 1969, entitled "Cigarette Labeling and Advertising–1969."
Now, you've testified earlier in – in this session that you were familiar with that hearing, and, in fact, this was one of the first assignments you had when you joined The Tobacco Institute in '69. Do you recall that?
A: (Witness nods head)
Q: That you dealt with this hearing –
A: That was the hearing that was needed in order to bring up to date the Cigarette

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Advertising – the '64 – the '65 act.
Q: All right.
A: Four years –
MS. HONDORF: Okay. Before you pose your question, let me object. This document is incomplete, number one, and your last narrative seems like you were doing a little testifying. Those are my objections. They're on the record.
BY MR. VANDERSTAR:
Q: All right. Will you turn in this exhibit –
A: Forty-three now?
Q: Yes – in Exhibit 43 to page 1255. It will be about six or eight pages from the end.
A: 1255: Statement of Dr. Milton D. Rosenblatt.
Q: Is that the Dr. Rosenblatt that you referred to in your testimony earlier?
A: Yes, sir. He's the –
Q: Now, you remember – you remember you talked to him about this question – I withdraw that.
Remember you testified that he had spoken to this question about statistical

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association which we just talked about?
A: I want to be sure that he was the death certificate -
Q: Uh-huh.
A: - investigator.
Q: We'll come to that. We'll come to that in just a minute.
A: Okay. Yeah.
Q: I want to get to that, but I want to cover another point first.
A: All right.
Q: Do you remember that he is one of the people who had spoken out on this question of statistical association?
A: Uh-huh.
Q: Now, on page 1256 in his - in the hearing transcript - do you have that page?
A: Uh-huh.
Q: Now, the second full paragraph, which begins, "It must be emphasized" -
A: (Reading)
- at the outset that the evidence incriminating cigarettes as a cause of disease is based on a

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statistical association.
Q: All right. And read on. Read on, please.
A: (Reading)
The purported pathologic and experimental corroboration is tenuous and contradictory. The widely publicized accusations of hundreds of thousands of deaths caused by cigarettes, and, the shortening of life expectancy a specific number of minutes per cigarette smoked, are fanciful extrapolations and not factual data.
Q: Now, was that The Tobacco Institute speaking or the cigarette companies speaking?
A: No. That was Dr. Rosenblatt.
Q: All right.
A: From New York.
Q: All right. Now -
MS. HONDORF: Wait a minute. I want to object. There's a paragraph right above it,

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where Dr. Rosenblatt said: (Reading)
I have been asked by the representatives of the tobacco industry to express my views to you.
I want that on the record.
MR. VANDERSTAR: It's on -
THE WITNESS: Yeah.
MR. VANDERSTAR: It's on the record.
THE WITNESS: It's no problem.
BY MR. VANDERSTAR:
Q: All right. Does it surprise you that the tobacco industry asked a physician who has views that are consistent with the industry's position to come and present those views to the Congress?
A: That's what anybody would do involved in a controversy of this magnitude.
Q: Is the tobacco industry the only industry in America that's ever asked people to come and express their views to committees of Congress?
A: Not to my knowledge. I think every one I have any familiarity with, industry in Washington, that testifies or has problems

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before the Congress, they ask people to come in and support their position, if they can find them.
Q: And that's both industry and nonprofit groups do that?
A: Oh, sure.
Q: Does the American Cancer Society ask people to come present their views to Congress?
A: I'm assuming they do. I think - if you look at the list of people who come in, Captain Kangaroo and people like that, they sure don't close up their TV studio and come down. Mr. Waxman gets them in there.
Now, whether it's Waxman or the Cancer Society, I don't know. But they're working hand in glove. And so what one does, the others - you know, it's a - it's a -
Q: That's the way you do it?
A: Yeah, that's the way it's done.
Q: All right. Turn please to the next page, which is page 1258.
A: Yeah.
Q: You have that page?
A: Yes, sir.
Q: And go down one, two, three, four

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paragraphs to the paragraph that begins with "Official lung cancer statistics." Would you read –
A: "Are based upon death certificates"?
Q: Read that – read that paragraph, please.
A: (Reading)
Official lung cancer statistics are based on death certificates and not on autopsy findings. Certificates are written promptly after death – [wait a minute, let me] – certificates are written promptly after death but considerable time may be required for completion of the autopsy. When the diagnosis of lung cancer is found to be erroneous at autopsy, this is not reflected in the vital statistics. A recent ten-year study of cases

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diagnosed primarily lung cancer on the death certificate revealed that in almost 60 percent of the cases autopsied, the original clinical diagnosis of lung cancer had been incorrect.
Q: Thank you. Would you turn to the next page, 1260 – the next sheet, I mean, page 1260, and go to the bottom of that page, please.
A: Yes, sir.
Q: Would you read that paragraph that begins "The concept."
A: (Reading)
The concept that cigarette smoking is the cause of the increase in lung cancer and emphysema is a colossal blunder. A mountain of sophisticated computerized extrapolations has been built on a very – [some kind of] foundation.
Q: Tenuous?

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A: (Reading)
– tenuous foundation. My interest in the statistical association dates back to the early 1950s when Dr. Harold Dorn, Chief, [of the] Office of Bio –
Q: How do you pronounce that?
Biometry?
A: Chief – biometry, I guess. (Reading)
– Chief, Office of Biometry, National Certificates (sic) of Health.
Q: National Institutes of Health?
A: Institutes of Health. (Reading)
– National Institutes of Health, worked with me in the preparation –
preparation –
My copy is bad there.
Q: "Preparation." Go to the next page.
A: Oh, yeah. (Reading)
– the preparation of my book on lung cancer. At the time I challenged the

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validity of the incrimination of cigarettes and, after almost 20 years of repetitious retrospective and prospective studies, I still find the conclusions impossible to reconcile with the biologic behavior of these diseases.
Q: All right. Thank you. Now, Mr. Kornegay, this excerpt that I have marked as Exhibit 43, I'll just state for the record, also includes excerpts of testimony by other people. And I want to just read the names to you and ask you if those names ring any bell with you.
First, Dr. Duane Carr, Professor of Surgery, University of Tennessee, College of Medicine. Does that name ring any bell with you?
A: I've heard the name, but I've lost the association.
Q: All right.
A: I don't recall it.
Q: Well, his – his testimony is in

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this exhibit. We won't read it into the record.
The next one is Dr. Leo Katz,
Professor of Statistics at Michigan State
University.
A: I've heard that name.
Q: All right.
A: I don't recall what his testimony was.
Q: All right. And again, his testimony
is in this transcript –
A: Uh-huh.
Q: – and we won't – we won't take the
time to read it.
R.H. Rigdon, Professor of Pathology
at the Medical Branch University of Texas. I
believe it's in Galveston. Does that ring any
bell?
A: No, no, it doesn't. I don't – I can't –
Q: All right. Well –
A: I can't place him.
Q: – his testimony is in here, too,
and –
A: Yeah.
Q: – we'll let it go at that.
And then Dr. Irving Zeidman,
Z-E-I-D-M-A-N, Professor of Pathology at the

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University of Pennsylvania. Does that ring any
bell?
A: I've head the name, but I have no
recollection of what the essence of his
testimony was.
Q: All right. Well, their testimony is
in the record and we won't take the time on the
transcript to –
A: All right.
Q: – to read it.
I want to show you an exhibit that
was marked earlier in your testimony, namely,
Exhibit 20.
(COMMENTS OFF RECORD)
VIDEOGRAPHER: This concludes Tape
Number 4 of the deposition of Horace Kornegay.
The time is 2:54 p.m.
(DISCUSSION OFF THE RECORD)
VIDEOGRAPHER: This is Tape Number 5
of the deposition of Horace Kornegay. The time
is 2:57 p.m.
BY MR. VANDERSTAR:
Q: All right. Mr. Kornegay, following
up on the testimony in the 1969 hearings, let me
ask you a very general question.

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Did The Tobacco Institute, in its
publications on smoking and health, ever refer
to or cite things like that testimony that we
were just looking at?
A: Yes, I'm sure they did, as – as the
authority for a statement that was made by The
Institute.
Q: Okay. Let me – let me ask the same
question a different way. Did The Institute
ever put out statements about causation and
statistical association and things of that sort
without having some authority to cite for it?
A: No, no, no, no. It was based on some
of – the opinion of some qualified expert.
Q: Okay. Let me show what was marked
earlier in testimony –
A: And those people were, in our view,
qualified experts.
Q: All right. Let me show you what was
marked earlier as Exhibit 20, which is one of
these pamphlets. And this one is called "The
cigarette controversy eight questions and
answers."
A: Uh-huh.
Q: Do you remember you were asked about

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that?
A: Yeah, I was asked about it. And I remember
the – the eleven – the twelve questions and
answers. Anyway, this is – I don't deny this
is a –
Q: All right.
A: This –
Q: Would you turn to the back of that
and – and tell me if you see footnotes, lists
of authority, citations, whatever you want to
call them.
A: This looks like it came right out of the
congressional hearings.
Q: How many pages of footnotes are
there in that publication?
A: Well, there are – there's one, two, three,
four, five, six.
Q: How many footnotes altogether?
A: Ninety-five altogether.
Q: And would you just pick one or two
at random and read them into the record.
A: Sure. "Smoking and Health, The Journal of
the American Medical Association."
Another one is, "Hearings, Committee
on Interstate and Foreign Commerce, 46 supra."

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That would have been – let's read another one.
Number 79, "Thomas, C.B., Familial and
Epidemiologic Aspects of Coronary Disease and
Hypertension." Journal of Chronic Diseases,
3 – 7 (3) 19 – the citation is to 206.
Q: That –
A: March of '58.
Q: All right. Is that typical of the
authority, whether cited or not, that the TI
relied on when it published statements about
smoking and health?
A: Uh-huh. Oh, yeah.
Q: All right.
A: Yes, sir. They would never publish
anything that could not be substantiated from
the scientific – from the scientific
literature.
Q: Okay. All right. Let me ask – let
me ask you about one more exhibit now.
A: All right.
Q: We're going to mark this one as
Exhibit 44. And you'll recognize the author of
that.
(EXHIBIT NUMBER 44 WAS MARKED FOR IDENTIFICATION)
THE WITNESS: Did you see it?

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MS. HONDORF: No, I've got one.
This looks like it was produced.
BY MR. VANDERSTAR:
Q: And who is the author of Exhibit 44,
Mr. Kornegay?
A: Horace R. Kornegay.
Q: That's you?
A: Yeah, that's me.
Q: And what is it?
A: It's a statement that I made before the
Health Subcommittee of – the House Committee
of – the Health Environment Subcommittee of the
House Committee on Interstate Foreign Commerce,
back on May the – February the 15th, 1978.
It –
Q: All right. Would you turn to
page –
A: It deals with the –
Q: Go ahead.
A: – period when Secretary Califano was
running the Department of HEW.
Q: All right. Would you turn to page 4
of that – those remarks.
A: Page 4. All right. I have it.
Q: Now, do you see, you quote from a

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prior transcript –
A: Dr. Hart. Senator Hart.
Q: Go ahead and say what that is.
A: All right. (Reading)
At the hearing of the
Senate Subcommittee on
Health, the following
colloquy occurred.
Q: Yes.
A: Senator Hart – he was from Michigan,
quote: (Reading)
I would merely ask if
cigarette smoking causes
heart disease.
Dr. Cooper, that was Dr. Theodore
Cooper –
Q: Who was he?
A: – Head of The Institute of Heart – Heart
and Lung, I believe it was. Quote: (Reading)
No.
Senate Hart: It does
not?
Dr. Cooper: No. I
think it – I think to be
absolutely candid with you,

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the risk factor does not mean
cause.
MR. VANDERSTAR: Thank you,
Mr. Kornegay. I have no further questions.
THE WITNESS: Thank you, sir.
MS. HONDORF: I have one issue to
deal with. And I apologize, Mr. Kornegay. I
know you're very tired.
Perhaps in the best interest, we
could put your testimony about – from the
Cipollone deposition, about this Exhibit 26,
"Background for the shift in the science
policy" – you can review it and then we can put
it on the record. You can tell me whether you
agree or disagree with it today.
The reason I'm doing this is because
the documents that we referred to earlier about
joint industry research did not have anything to
do with the Tobacco Working Group. It had to do
with an internal joint Tobacco Institute and
industry research working group. And I believe
his testimony will clarify that.
MR. VANDERSTAR: May I see?
MS. HONDORF: Yeah, I'm going to
hand them over.

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MR. VANDERSTAR: For the record, I object to your preamble.
MS. HONDORF: Okay. That's fine.
(COMMENTS OFF RECORD)
MR. FOUTS: Ms. Hondorf, would you enlighten me a little bit about what it is you're doing?
MS. HONDORF: Well –
MR. FOUTS: Is there – is there a contention that his testimony here at this deposition is contrary to what he testified to in Cipollone?
MS. HONDORF: No, I have no contention of that. I just want to straighten up the fact that when we talked about a joint research work, we were not talking about the Tobacco Working Group.
The documents that I used do not have anything to do with the documents that – that counsel across the table used to explain his testimony.
MR. VANDERSTAR: Vanderstar.
MS. HONDORF: Mr. Vanderstar. I'm sorry.
MR. FOUTS: I understand. Thank

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you.
MS. HONDORF: And I don't want to ask him to read it on the record. And I know he's tired. So I just want to get it in the record.
MR. FOUTS: Okay.
MS. HONDORF: Is that acceptable?
MR. FOUTS: Surely. I haven't read Cipollone. I wasn't there. I don't know what he said there.
MS. HONDORF: Well, it took me five nights to read it. It took you five days to give it.
THE WITNESS: Cipollone?
MS. HONDORF: Uh-huh.
THE WITNESS: Five days one week and four days another week. That was the one with that little fellow from Jersey City, I believe, one of –
MS. HONDORF: His name was –
THE WITNESS: One of the suburbs of New York.
MR. EDWARDS: The whole state is a suburb.
MS. HONDORF: His name was Mark

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Edell.
THE WITNESS: Mark Edell. That's right. Yeah, that's right.
MS. SALZMAN: Still is his name.
THE WITNESS: Is that still his name? He hasn't changed it. I had a good time with him.
MR. VANDERSTAR: I'm missing something. Are you – do you mean to be referring to the Joint Committee on Tobacco and Health that Mr. Kornegay testified about 30 minutes ago? Because this transcript doesn't have anything to do with that.
MS. HONDORF: I understand that. And the way I understood your testimony, you were trying to clear up the question I was trying to get him to answer, and he went in the wrong direction, because we were not talking about the Tobacco Working Group.
MR. VANDERSTAR: Well –
MS. HONDORF: The document has nothing to do with it. And I just wanted to –
MR. VANDERSTAR: What document has nothing to do with it?
MS. HONDORF: Document Number 26.

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MR. VANDERSTAR: Well, of course, it doesn't. That was ten years later.
MS. HONDORF: Right.
MR. VANDERSTAR: I didn't show him Exhibit 26.
MS. HONDORF: I did. But you tried to clear up his testimony about an industry research group.
MR. VANDERSTAR: No.
MS. HONDORF: And I was going to put the testimony in the record.
MR. VANDERSTAR: No. No. Well, you can do whatever you like, but you're wasting your time, because I was not directing his attention to Exhibit 26 or to this Joint Industry Research Group. I was talking about a different joint – that's why I kept pressing him on what he meant by joint. That it was a joint government AMA industry group, back in the early – late '60s and early '70s. But you go ahead –
MS. HONDORF: Okay. I'm just putting this in the record to clear up the question.
MR. VANDERSTAR: Go right ahead.

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MS. HONDORF: Okay?
MR. VANDERSTAR: Go right ahead.
MS. HONDORF: So it's going to be - pages 213 through pages 2 - it's a different set than you have in your hand - 218 of the deposition testimony of August 17th, 1984, and it's going to be - could you hand me that back and I'll trade you - the deposition testimony, pages 520 through 524 of - I think it's the same day.
MR. VANDERSTAR: Unlikely to be the same day as 200 -
MS. HONDORF: No, it wouldn't be. It wouldn't be the same day. It's Cipollone -
MR. VANDERSTAR: Are you marking two different pieces of Cipollone?
MS. HONDORF: Two different pieces. There's five volumes of this testimony.
MR. VANDERSTAR: I know.
MS. HONDORF: So you'll have to bear with me.
MS. SALZMAN: But the pages -
MS. HONDORF: The page numbers are not going to be changed. So its pages 520 through 524 and the pages you have in your hand.

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MR. VANDERSTAR: Which is 213 through 218.
MS. HONDORF: Uh-huh.
MR. FOUTS: Did you ever determine the date that pages 520 through 524 were?
MS. HONDORF: I'm working on it. I'm trying real hard. I don't have much left. I copied these myself right before I came, and that could be why they're so messed up.
MR. FOUTS: Well, I don't suppose it's important if there's only one page 520.
MS. HONDORF: There's only one page 520 and only one page 524. So -
MR. FOUTS: All right.
MS. HONDORF: With lack of cover pages, you still have the proper page numbers. They are from two different days of testimony.
MR. FOUTS: And you're putting those in as Exhibit 45?
MS. HONDORF: Right. And I will let -
MS. SALZMAN: I'll tell you page 520 is from the date of - this is my representation from my own notes - looks like the fourth volume.

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MS. HONDORF: I thought I had a cover page for all volumes here.
MS. SALZMAN: Volume 4.
MS. HONDORF: Volume 4. Does it have a date?
Would you like to take a look at this, or are you finished?
THE WITNESS: I'm through. I really am. I've about had it.
MS. HONDORF: I know you're tired. I'm sorry.
THE WITNESS: Is this Cipollone?
MS. HONDORF: Yes.
THE WITNESS: Well, what's the problem with it now? Tell me.
MS. HONDORF: There's no problem with it. We're just trying to clear up what I thought was a confusion on the record.
MR. FOUTS: You - you going to put a sticker on it?
MS. HONDORF: Yes, right here.
(EXHIBIT NUMBER 45 WAS MARKED FOR IDENTIFICATION)
And John doesn't think it's a confusion. But we'll err on the side of caution.

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MR. FOUTS: Horace, as I understand it, that's four or five pages of testimony you gave on August 17th of '84, and then starting on page 520, it's a different day.
MS. HONDORF: Might be in December of the same year, and it might be in August, one of those same times.
MR. VANDERSTAR: Does that conclude the deposition?
MS. HONDORF: I'm finished.
MR. VANDERSTAR: All right. That concludes the deposition, Mr. Kornegay. Thank you very much for your patience.
MR. FOUTS: She's not asking you any questions about that.
THE WITNESS: Oh, okay. Okay.
MS. HONDORF: I just wanted you to review so you knew what we were doing.
VIDEOGRAPHER: Let me conclude it. Are we through?
MR. VANDERSTAR: We are through.
VIDEOGRAPHER: This concludes the deposition of Horace Kornegay. The time is 3:11 p.m.
(SIGNATURE WAIVED)

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STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

REPORTER'S CERTIFICATE

I, Elizabeth S. Girvan, a Notary Public in and for the State of North Carolina, do hereby certify that there came before me on Wednesday, November 19, 1997, the person hereinbefore named, who was by me duly sworn to testify to the truth of his knowledge concerning the matters in controversy in this cause; that the witness was thereupon examined under oath, the examination reduced to typewriting under my direction, and the deposition is a true record of the testimony given by the witness. I further certify that I am neither attorney or counsel for, nor related to or employed by, any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official notarial seal, this the 26th day of November 1997.

Elizabeth S. Girvan, Notary Public
My Commission Expires March 5, 2000

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